



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 22 मई, 2019/01 ज्येष्ठ, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 7th March, 2019

No. Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

| Sl. No. | Ref. No. | Petitioner | Respondent | Date of Award/ Order |
|---------|----------|---------------------|-----------------------------|----------------------|
| 1. | 565/15 | The Worker Tigaksha | The Employer M/s Tigaksha | 05-10-2018 |
| 2. | 345/16 | Ram Chand | E. E. HPPWD/IPH Killar | 08-10-2018 |
| 3. | 367/16 | Keto Devi | -do- | 08-10-2018 |
| 4. | 239/16 | Bhag Chand | -do- | 08-10-2018 |
| 5. | 169/16 | Mahatam Chand | -do- | 08-10-2018 |
| 6. | 438/16 | Budhi Ram | -do- | 08-10-2018 |
| 7. | 127/16 | Dibi Devi | -do- | 08-10-2018 |
| 8. | 604/15 | Raj Kumari | -do- | 08-10-2018 |
| 9. | 601/15 | Chatter Singh | -do- | 08-10-2018 |
| 10. | 293/16 | Gilm Dei | -do- | 08-10-2018 |
| 11. | 161/16 | Sevi Devi | -do- | 08-10-2018 |
| 12. | 459/16 | Raj Mal | -do- | 08-10-2018 |
| 13. | 752/16 | Prakash Chand | D. F. O. Suket | 10-10-2018 |
| 14. | 588/16 | Desh Raj | -do- | 10-10-2018 |
| 15. | 753/16 | Babu Ram | -do- | 10-10-2018 |
| 16. | 874/16 | Paras Ram | -do- | 10-10-2018 |
| 17. | 516/16 | Chaman Lal | -do- | 10-10-2018 |
| 18. | 515/16 | Dhani Ram | -do- | 10-10-2018 |
| 19. | 514/16 | Ramesh Kumar | -do- | 10-10-2018 |
| 20. | 260/15 | Ramesh Chand | -do- | 10-10-2018 |
| 21. | 409/16 | Pradeep Kumar | E.E. HPPWD, Nurpur | 11-10-2018 |
| 22. | 439/16 | Kuldeep Singh | E.E. HPPWD, Fatehpur | 11-10-2018 |
| 23. | 587/16 | Man Singh | E.E. Flood Protection, I&PH | 30-10-2018 |
| 24. | 654/16 | Pardeep Kumar | E.E. Flood Protection, I&PH | 30-10-2018 |
| 25. | 652/16 | Manoj Kumar | E.E. Flood Protection, I&PH | 30-10-2018 |
| 26. | 590/16 | Sanjeev Kumar | E.E. Flood Protection, I&PH | 30-10-2018 |
| 27. | 589/16 | Malkiat Singh | E.E. Flood Protection, I&PH | 30-10-2018 |
| 28. | 45/16 | Jagdish Chand | E.E. HPPWD, Dharampur | 31-10-2018 |
| 29. | 684/16 | Roshani Devi | E.E. HPPWD, Dharampur | 31-10-2018 |
| 30. | 727/16 | Kashmir Singh | E.E. HPPWD, Dharampur | 31-10-2018 |

By order,

NISHA SINGH, IAS.

Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 565/2015

The Workers M/s Tejassarnika Hydro Energies Private Limited, Village Lajna, P.O. Jungra, Tehsil Churah, District Chamba, H.P. . *Petitioners.*

Versus

The Employer/General Manager, M/s Tejassarnika Hydro Energies Private Limited, 12 MW Upper Joiner Hydro Electric Project, Village Lajna, P.O. Jungra, Tehsil Churah, District Chamba, H.P. . *Respondent.*

5-10-2018 Present: Sh. Jai Singh, Adv. for petitioners

Sh. Vaneet Gupta, Adv. for respondent

Heard. Ld. Counsel for the petitioners has made statement that he does not want to proceed with the instant claim petition as the matter has been amicably resolved between the parties. His separate statement to this effect is recorded and placed on file. Keeping in view of the same, present claim petition is hereby dismissed as withdrawn and the reference is answered accordingly. The parties to bear their own costs. File, after due completion be consigned to the Records.

Sd/-

Announced:
05-10-2018

(K. K. SHARMA),
Presiding Judge,
*Labour Court-cum-Industrial Tribunal
Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 345/2016

Date of Institution : 26-5-2016

Date of Decision : 08-10-2018

Shri Ram Chand s/o Shri Karam Lal, r/o Village Parmar, P.O. Kumar, Tehsil Pangri, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangri, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ram Chand s/o Sh. Karam Lal, r/o Village Parmar, P.O. Kumar, Tehsil Pangi, District Chamba, H. P. during 05/1999 by the Executive Engineer, Killar H.P.P.W.D. Division Killar, District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 152, 15 and 51 days during years 1997, 1998 and 1999 respectively and delay of 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1996 who continuously worked till 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till

the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2004 having completed 08 years of service as per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangri Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1999, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:

1. Whether termination of services of petitioner by the respondent during May, 1999 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1: Yes

Issue No. 2 : Discussed

Issue No. 3: No

Issue No. 4: Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till 1999 whereas the claimant/petitioner alleges that he had worked from 1996 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from March, 1997 till May, 1999 and not from 1996 upto October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1997 to May, 1999. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in May, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after May, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 152 days in the year 1997, 54 days in 1998 and 51 days in 1999 and thus a total of his service in 1997 to 1999 in 03 years he had worked for 257 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 51 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after May, 1999 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after 14 years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 257 days as per mandays chart on record and that the services of petitioner were disengaged in May, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years i.e.** demand notice was given in the year 2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and

laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 367/2016

Date of Institution : 27-5-2016

Date of Decision : 08-10-2018

Smt. Keto Devi w/o Shri Sant Ram, r/o V.P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D/I&PH Division Killar (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Keto Devi w/o Shri Sant Ram, r/o V.P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. during 07/2004 by the Executive Engineer, H.P.P.W.D. Division Killar (Pangi), District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 18-07-2013 after 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 59, 61, 53, 99 and 50 days during years 1999, 2000, 2002, 2003 and 2004 respectively and delay of 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1999 who continuously worked till July, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of July, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st January, 1997 to 1st April, 2001. In the end of month of July,

2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of July, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of July, 2004. She further prayed for reinstatement in service *w.e.f.* month of July, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1999 to July, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2007 having completed 08 years of service per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2003 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers, copy of mandays chart Ex. PW1/M, copy of demand notice Ex. PW1/N, copy of

order dated 2-10-2013 Ex. PW1/O, copy of order of Hon'ble High Court dated 26-10-2015 Ex. PW1/P, copy of judgment dated 25-4-2016 Ex. PW1/Q and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent during July, 2004 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and

convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from June, 2003 till July, 2004 whereas the claimant/petitioner alleges that she had worked from 1999 to July, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from June, 2000 and not from 1999. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 2003 to 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in July, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 99 days in the year 2003 and 50 days in 2004 and thus a total of her service in 2003 to 2004 in 02 years she had worked for 149 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 50 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2003 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2004 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2003 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after 09 years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference** made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days

and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 149 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years i.e.** demand notice was given 18-7-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 41 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-

(K. K. SHARMA),

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 239/2016
Date of Institution : 21-4-2016
Date of Decision : 08-10-2018

Shri Bhag Chand s/o Shri Jagdev, r/o Village Findru, P.O. Sach, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I&PH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I. S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Bhag Chand s/o Sh. Jagdev, r/o Village Findru, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. during 8/2000 by the Executive Engineer, I&PH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 179 days during the year 1998 and 2000 and has raised his industrial dispute *vide* demand notice dated 23-10-2011 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1998 & 2000 and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1995 who continuously worked till August, 2000 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of August, 2000 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August, 2000 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of August, 2000. He further prayed for reinstatement in service *w.e.f.* month of August, 2000 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to August, 2000 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service as per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar Vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of

petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2000, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:

1. Whether termination of services of petitioner by the respondent during August, 2000 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief

: Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1, 2 and 4 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till 2000 whereas the claimant/petitioner alleges that he had worked from 1995 to August, 2000. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from November, 1998 till July, 2000 and not from 1996 upto July, 2000. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1998 to July, 2000. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in July, 2000 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangri Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 28 days in the year 1998 and 151 days in 2000 and thus a total of his service in 1998 to 2000 in 02 years he had worked for 179 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 151 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1998 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2000 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which

Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after 11 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not**

applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 179 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2000 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years i.e.** demand notice was given on 23-10-2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 46 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-

(K. K. SHARMA),

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 169/2016

Date of Institution : 17-3-2016

Date of Decision : 08-10-2018

Shri Mahatam Chand s/o Shri Pan Dass, r/o VPO Rei, Tehsil Pangi, District Chamba, H.P.

. .Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P.

. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Mahatam Chand s/o Shri Pan Dass, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 25-12-2011 regarding alleged illegal termination of his services during August, 2004 suffers from delay and latches? If not, whether termination of services of Shri Mahatam Chand s/o Shri Pan Dass, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. during August, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1992 who continuously worked till August, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of August, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of August, 2004. He further prayed for reinstatement in service *w.e.f.* month of August, 2004

alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1992 to August, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service as per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar Vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 25-12-2011 qua his termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? . . .OPP.

2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.1,50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and backwages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1992 to August, 2004. he has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not

only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 160 days in the year 1992, 26 days in 1993, 161 days in 1994, 156 days in 1996, 86 days in 1997, 115 days in 1998, 70 days in 1999, 87 days in 2000, 64.5 days in 2001, 26 days in 2002, 94 days in 2003 and 95 days in 2004 and thus a total of his service in 1992 to 2004 in 12 years he had worked for 1140.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 95 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1992 or thereafter whereas Ex. PW1/E to

Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Id. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after 07 years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 12 years and actually worked for 1140.5 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 25-12-2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 51 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which

the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No. 4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-

(K. K. SHARMA),

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 438/2016

Date of Institution : 19-8-2016

Date of Decision : 08-10-2018

Shri Budhi Ram s/o Shri Sham Lal, r/o Village Parmar, P.O. Kumar, Tehsil Pangi,
District Chamba, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I. S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Budhi Ram s/o Shri Sham Lal, r/o Village Parmar, P.O. Kumar, Tehsil Pangi, District Chamba, H.P., during year 1999 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 02-09-2013 after lapse of more than 14 years. If not, keeping in view delay of more than 14 years in raising industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1994 who continuously worked till 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the year 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the year 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record

who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of August, 2000. He further prayed for reinstatement in service *w.e.f.* 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service as per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as *Rakesh Kumar Vs. State of H.P.* and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1999, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for backwages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-09-2013 *qua* his termination of service during year 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during year 1999 is/was illegal and unjustified? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till 1999 whereas the claimant/petitioner alleges that he had worked from 1994 to 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be

drawn is that petitioner had been factually engaged from May, 1998 till September, 1999 and not from 1994 upto 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1998 to September, 1999. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 166 days in the year 1998 and 124 days in 1999 and thus a total of his service in 1998 to 1999 in 02 years he had worked for 290 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only

with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 124 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1998 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 1999 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after 14 years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may

be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked

for 290 days as per mandays chart on record and that the services of petitioner were disengaged in September, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** i.e. demand notice was given on 2-9-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 46 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No. 4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-

(K. K. SHARMA),

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 127/2016
Date of Institution : 04-03-2016
Date of Decision : 08-10-2018

Smt. Dibi Devi w/o Shri Thakur Lal, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Dibi Devi w/o Shri Thakur Lal, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil-received in Labour Office, Chamba on 8-5-2012 regarding her alleged illegal termination of service during August 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Dibi Devi w/o Shri Thakur Lal, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1994 who continuously worked till August, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial

breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of August, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of August, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of August, 2004. She further prayed for reinstatement in service *w.e.f.* month of August, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to August, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service as per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent,

question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 04-10-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.45,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1999 till 2004 whereas the claimant/petitioner alleges that he had worked from 1994 to August, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from July, 1999 and not from 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1999 to August, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it

could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 112 days in the year 1999, 52 days in 2001, 92 days in 2002, 96 days in 2003 and 84 days in 2005 and thus a total of her service in 1999 to 2004 in 05 years she had worked for 436 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 84 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1998 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after 07 years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 436 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 8-5-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 46 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 45,000/- (Rupees forty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 45,000/- (Rupees forty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so

awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-

(K. K. SHARMA),

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 604/2015

Date of Institution : 19-12-2015

Date of Decision : 08-10-2018

Ms. Raj Kumari d/o Shri Chatar Singh, r/o VPO Rei, Tehsil Pangi, District Chamba, H.P.

. .Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H., Killar (Pangi), District Chamba, H.P.

. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I. S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Ms. Raj Kumari d/o Shri Chatar Singh, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. *vide* demand

notice dated 02-02-2012 regarding her alleged illegal termination of services during August, 2005 suffers from delay and laches? If not, whether termination of services of Ms. Raj Kumari d/o Shri Chatar Singh, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. during August, 2005, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1994 who continuously worked till August, 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of August, 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August, 2005 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of August, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of August, 2005. She further prayed for reinstatement in service *w.e.f.* month of August, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to August, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service as per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2005, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 04-10-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-02-2012 *qua* her termination of service during August, 2005 by respondent suffers from the vice of delay and laches as alleged?
..OPP.
2. Whether termination of the services of petitioner by the respondent during August, 2005 is/was illegal and unjustified as alleged? ..OPP.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.

4. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 1,80,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to August, 2005. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the

authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 162 days in the year 1994, 154 days in 1995, 164 days in 1996, 119 days in 1997, 152 days in 1998, 120 days in 1999, 106 days in 2000, 128 days in 2001, 54 days in 2002, 120 days in 2003, 53 days in 2004 and 61 days in 2005 and thus a total of her service in 1994 to 2005 in 12 years she had worked for 1229 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 61 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more

than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2005 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after 06 years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during

employment her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 12 years and actually worked for 1229 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years i.e.** demand notice was given on 2-2-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 1,80,000/- (Rupees one lakh eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,80,000/- (Rupees one lakh eighty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

| | |
|---------------------|--------------|
| Ref. No. | : 601/2015 |
| Date of Institution | : 19-12-2015 |
| Date of Decision | : 08-10-2018 |

Shri Chatter Singh s/o Shri Bhagi Ram, r/o Village Findru, P.O. Mindhal, Tehsil Pangi,
District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Chatter Singh s/o Shri Bhagi Ram, r/o Village Findru, P.O. Mindhal Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 02-02-2012 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, Whether termination of services of Shri Chatter Singh s/o Shri Bhagi Ram, r/o Village Findru, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 2003 who continuously worked till September, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of August, 2000 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 07 persons who were junior to petitioner and joined service from 2003 to 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been

afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 2003 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2011 having completed 08 years of service as per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 3, 5 & 7 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 4 & 6 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-02-2012 *qua* his termination of service during Sept. 2004 by respondent suffers from the vice of delay and laches as alleged? . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.15,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked only in the year 2004 whereas the claimant/petitioner alleges that he had worked from 2003 to September, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 2004 and not from 2003. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if

petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from June, 2004 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 95 days in the year 2004 and thus a total of his service in 2004 in 01 year he had worked for 95 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 95 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet

requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 2007 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2004 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2004 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after 07 years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute.

Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D. A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 01 year and actually worked for 95 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on

2-2-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 32 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 293/2016

Date of Institution : 10-5-2016

Date of Decision : 08-10-2018

Smt. Gilm Dei w/o Shri Surender Kumar, r/o Village Dhandla, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Gilm Dei w/o Shri Surender Kumar, r/o Vill. Dhandla PO Sahali, Tehsil Pangi, District Chamba, H.P. during 09/2000 by the Executive Engineer, Killar Division H.P.P.W.D. Killar (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 84, 09 and 84 days during years 1998, 1999 and 2000 respectively and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1997 who continuously worked till September, 2000 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so

as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of September, 2000 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2000 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of September, 2000. She further prayed for reinstatement in service *w.e.f.* month of September, 2000 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to September, 2000 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2005 having completed 08 years of service as per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2000, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there

was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination which are as under:

1. Whether termination of service of petitioner by the respondent during 9/2000 is/was illegal and unjustified as alleged? If so, its effect? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till 2000 whereas the claimant/petitioner alleges that he had worked from 1997 to September, 2000. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1998 and not from 1997. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division Chamba District and remained engaged from 1998 to September, 2000. she has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2000 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the

job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 84 days in the year 1998, 09 days in 1999 and 84 days in 2000 and thus a total of her service in 1998 to 2000 in 03 years she had worked for 177 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 84 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the yearwise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2000 even at the time when junior persons were reengaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status

of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after 13 years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D. A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in

view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 177 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2000 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** i.e. demand notice was given on 2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 161/2016
Date of Institution : 17-3-2016
Date of Decision : 08-10-2018

Smt. Sevi Devi w/o Shri Bhagwan Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P.*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar Tehsil Pangi, District Chamba, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Sevi Devi w/o Shri Bhagwan Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 12-6-2012 regarding her alleged illegal termination of service during October, 2001 suffers from delay and laches? If not, whether termination of the services of Smt. Sevi Devi w/o Shri Bhagwan Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. during October, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is

legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of June, 1994 who continuously worked till October, 2001 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of October, 2001 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October, 2001 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2001. She further prayed for reinstatement in service *w.e.f.* month of October, 2001 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2001 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service as per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar Vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at her own

sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangri Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2001, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 12-06-2012 *qua* her termination of service during October, 2001 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during October, 2001 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

| | |
|--------------------|---|
| <i>Issue No. 1</i> | : Discussed |
| <i>Issue No. 2</i> | : Yes |
| <i>Issue No. 3</i> | : Discussed |
| <i>Issue No. 4</i> | : Discussed |
| <i>Relief</i> | : Petition is partly allowed awarding lump sum compensation of Rs.25,000/- per operative part of award. |

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to October, 2001. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 59 days in the year 1994, 99 days in 1999 and 86.5 days in 2001 and thus a total of her service in 1994 to 2001 in 03 years she had worked for 244.5 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 86.5 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2001 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which

Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after 10 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not**

applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 244.5 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years i.e.** demand notice was given on 12-6-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 48 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No. 4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 459/2016

Date of Institution : 20-8-2016

Date of Decision : 08-10-2018

Shri Raj Mal s/o Shri Heera Sen, r/o Village & P.O. Udeen, Tehsil Pangi, District Chamba,
H.P.Petitioner.

Versus

The Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P.
.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I. S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Raj Mal s/o Sh. Heera Sen Village & P.O. Udeen, Tehsil Pangi, Distt. Chamba, H.P. during the year 8/2002 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 1075 days during the year 1989 to 2002 and has raised his industrial dispute *vide* demand notice dated 27-8-2012 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1989 who continuously worked till August, 2002 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of August, 2002 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August, 2002 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2002 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of August, 2002. He further prayed for reinstatement in service *w.e.f.* month of August,

2002 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1989 to August, 2002 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2001 having completed 10 years of service as per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhayay *Vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2002 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2002, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 27-8-2012 *qua* his termination of service during 08/2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*

2. Whether termination of the services of petitioner by the respondent during 08/2002 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1992 till 2002 whereas the claimant/petitioner alleges that he had worked from 1989 to August, 2002. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1992 and not from 1989. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have

worked with the respondent/department for more than 160 days in Pangri Sub Division Chamba District and remained engaged from 1992 to August, 2002. he has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangri Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 81 days in the year 1992, 44 days in 1994, 38 days in 1995, 56 days in 1996, 103 days in 1997, 150 days in 1998, 133 days in 1999, 113 days in 2000, 101 days in 2001 and 85 days in 2002 and thus a total of his service in 1992 to 2002 in 10 years he had worked for 904 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2002 the petitioner had merely worked for 85 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the yearwise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2002 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after 10 years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 904 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years i.e.** demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 54 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and

laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No. 4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 752/2016

Date of Institution : 18-11-2016

Date of Decision : 10-10-2018

Shri Prakash Chand s/o Shri Devi Ram, r/o Village and P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Prakash Chand s/o Shri Devi Ram, Village and P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. *w.e.f.* 21-03-2002 by Divisional Forest Officer, Suket Forest Division Sunder Nagar, District Mandi, H.P. who worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated nil received in the Office of Labour Office Mandi on 17-12-2014 after more than 12 years without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 15 and 41 days during years 2000 and 2002 respectively and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent on 21-11-1998 as daily waged beldar in Forest Division Suket at Sunder Nagar District Mandi, H.P. who continuously worked till 20-12-1998 when service of petitioner had been illegally terminated. Averments made in the claim petition revealed that petitioner had assailed termination order before the Hon'ble Administrative Tribunal, Shimla by filing O.A. No. 2940/1999 in which Hon'ble Administrative Tribunal *vide* its order dated 22-2-2000 passed an interim order directing respondent to re-engage petitioner in same capacity and place where he worked at the time of termination. It is alleged that petitioner was re-engaged by respondent who kept working and thereafter while disposing the petition on 10-1-2006 it was dismissed with liberty to petitioner to approach the competent court of jurisdiction for redressal of his grievance. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged as many as 110 daily wagers who were working with the respondent department as has also been reflected in the seniority list maintained by it. It is claimed that despite availability of work and funds, service of petitioner had been terminated in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity). The petitioner further claimed that respondent had not followed principle of 'Last come First Go' by not incorporating name of petitioner in seniority list and retrenching service of petitioner. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with back wages as petitioner had remained unemployed and all consequential benefits. It has been further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged as daily waged beldar as per availability of works and funds. It is asserted that petitioner had been engaged only for seasonal work subject to availability of works and funds and worked with Incharge Balag Beat in Jhungi Forest Range under Suket Forest Division in the month of 21-9-1998 and worked with respondent/department intermittently upto 20-3-2002. It is claimed that petitioner thereafter never came for work and thus petitioner had not completed required period of working days and his name was thus not included in seniority list rather he had been issued casual card. Admitted that O.A. No.2940/1999 was dismissed on 10-1-2006 filed by petitioner with liberty to approach appropriate court for redressal of his grievance and thereafter petitioner has raised demand notice in the year 2014 after a period of 12 years. It is also asserted that respondent that since petitioner at no point of time completed 240 days in any year for which he worked, provisions of Section 25-B of the Act were not attracted. It is also stated that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that department had engaged one Yashwant Singh who had been issued demand and during conciliation proceedings respondent department agreed to prepare seniority list from date of initial engagement. The petitioner also reiterated his stand qua violation of principle of 'Last come First go' envisaged under Section 25-G of the Act.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice dated 26-11-2014 Ex. PW1/B, copy of reply dated 7-5-2015 Ex. PW1/C, copy of rejoinder Ex. PW1/D, copy of information under RTI Act dated 3-8-2017 Ex. PW1/E (nine pages), copy of notification dated 8-7-2013 Ex. PW1/F, copy of regularization list 7-5-2015 Ex. PW/G. Ld. Counsel for petitioner further tendered/proved copy of judgment dated 5-11-2014 Ex. P1, copy of letter dated 21-5-2015 Ex. P2, copy of letter dated 1-5-2017 Ex. P3 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B1, copy of mandays chart Ex. RW1/B2 and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-1-2018 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 21-03-2002 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.15,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B1 showing petitioner to have merely worked for 56 days. In his affidavit Ex. PW1/A petitioner has stated to have been engaged by respondent on 21-11-1998 whose service had been terminated on 20-12-1998 and on 20-12-1998 petitioner had approached Hon'ble Administrative Tribunal, Shimla by filing O.A. No.2940/1999 and *vide* its order dated 22-2-2000 petitioner had been ordered to be re-engaged by the respondent in the same place and same capacity where he worked prior to termination. It is specifically stated in the affidavit that petitioner has been engaged and worked with the respondent as daily rated workman and thereafter Hon'ble Administrative Tribunal *vide* its order dated 10-1-2006 had dismissed petition with liberty to petitioner to seek appropriate relief before competent forum. It is further alleged in affidavit that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged 110 daily wagers as reflected in the seniority list although name of petitioner has not been incorporated in the seniority list so prepared. It is alleged in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained and service of petitioner had been terminated. In cross-examination, petitioner has admitted to have been engaged on 21-9-1998 at Balag at Jhungi as daily wager but worked intermittently till 20-3-2002 although clarified to have remained engaged continuously upto 20-3-2002 meaning thereby petitioner had been admitted to have been re-engaged as daily wager on 21-9-1998 to 20-3-2002. In cross-examination, he has also admitted to have not represented from 2002 to 2014 before respondent for engagement although admitted that demand notice had given in the year 2014.

12. RW1 Shri Suneet Bhardwaj, DFO, Suket Forest Division, Sunder Nagar the contesting respondent has admitted in cross-examination that petitioner worked under muster roll and that respondent did not issue any notice to petitioner when he absented from duty and at the same time, no action was taken. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that any daily wager who was engaged on muster roll his name was incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days. Be it stated in cross-examination RW1 has revealed that petitioner was initially engaged on 21-9-1998 besides admitted that workmen shown at serial No. 26 to 113 were engaged after termination of service

of petitioner on 21-03-2002. It is admittedly not the case of respondent that any notice was issued to petitioner calling upon him to join service while engaging workers shown at serial No. 26 to 113 in seniority list Ex. P4. It is manifest from seniority list that workers shown at serial No. 36 to 113 had been engaged in the month of January, 1999 and several others to have joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service which necessarily violates Section 25-H of the Act. As for the applicability of Section 25-H of Act, it was not necessary for the petitioner to establish that he actually worked for 240 days in preceding one year and has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B1 showed petitioner to have worked for 56 days and from January 1999 more than 100 workmen had been engaged before engaging any workmen and as such thereafter it was incumbent upon the respondent to have issued notice to petitioner calling upon him to join work/service which had not been done by respondent as admitted by RW1. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (supra) as referred to above, it is held that respondent had violated Section 25-H of the Act.

13. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had given intermittent break moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, it is not established that any workmen junior to petitioner had been retained in service. Thus, this court left with no option but to hold that petitioner has failed to establish violation of Section 25-G of the Act.

14. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

15. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had

completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 56 days as per mandays chart on record and that the services of petitioner were disengaged in 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** *i.e.* demand notice was given on 17-12-2014. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

16. In view of foregoing discussion, a lump-sum compensation of Rs.15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

| | |
|---------------------|--------------|
| Ref. No. | : 588/2016 |
| Date of Institution | : 24-8-2016 |
| Date of Decision | : 10-10-2018 |

Shri Desh Raj s/o Shri Hari Ram, r/o Village & Post Office Balag, Tehsil Sunder Nagar,
District Mandi, H.P. . Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Desh Raj s/o Shri Hari Ram, r/o V.P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during 01/2005 by the Divisional Forest Officer Suket Forest Division Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated nil received in the office of the Labour Office Mandi on 17-12-2014 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 42, 17, 80 and 30 days during years 2002, 2003, 2004 and 2005 respectively and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1998 as daily waged beldar in Forest Division Suket at Sunder Nagar District Mandi, H.P. who continuously worked till January, 2005 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the seniority list maintained by it. It is claimed that despite availability of sufficient work and funds, service of petitioner had been terminated in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity). The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating his service as his name too was not incorporated in seniority list. It is alleged that respondent had engaged several workers junior to petitioner namely Krishnoo, Ganga Ram, Harish, Indira, Balak Ram, Kamal Chand, Tej Ram, Prakash, Amar Singh. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with back wages and all other consequential benefits as petitioner had remained unemployed besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged as daily waged beldar as per availability of works and funds at the relevant period. It is asserted that petitioner had been engaged only for seasonal work subject to availability of works and funds and worked with Incharge Balag Beat in Jhungi Forest Range under Suket Forest Division from the month of January, 2002 who worked with respondent/department intermittently upto January, 2005 when he abandoned the job. It is claimed that petitioner after January, 2005 never came for work and thus petitioner had not completed

required period of working days *i.e.* 240 days in a year preceding his termination and his name was thus not included in seniority list rather he had been issued only casual card. It is denied that service of petitioner had been engaged *w.e.f.* 1998 till January, 2005 however it is stated that petitioner had been engaged *w.e.f.* January, 2002 who worked upto January, 2005. It is also asserted by respondent that petitioner at no point of time completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act were not attracted. It is asserted that persons junior to petitioner as claimed in para Nos. 5 and 6 of claim petition were engaged only on compassionate grounds however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that respondent/department had engaged one Yashwant Singh who had issued demand and during conciliation proceedings, respondent department agreed to prepare seniority list including name of said Yashwant Singh from date of initial engagement. The petitioner also reiterated his stand *qua* violation of principle of 'Last come First go' envisaged under Section 25-G of the Act as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of RTI information Ex. PW1/B (9 pages), copy of notification dated 8-7-2013 Ex. PW1/C, copy of regularization list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-12-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during January, 2005 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4

: Discussed

Relief

: Petition is partly allowed awarding lump sum compensation of Rs.25,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 169 days from years 2002 to 2005. In his affidavit Ex. PW1/A petitioner has stated to have been engaged by respondent in the year 1998 whose service had been terminated on January, 2005 but certainly there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from January, 2002 till January, 2005 whereas the claimant/petitioner alleged that he had worked from 1998 to 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record establishing petitioner to have been engaged in 1998, the only inference in such situation could be drawn is that petitioner had been factually engaged in January, 2002 and not in the year 1998 moreover petitioner has not mentioned any date or month when he was factually engaged. It is specifically stated in the affidavit that petitioner has been engaged who worked with the respondent as daily rated workman. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list and that name of petitioner had not been deliberately included in the seniority list so prepared. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained and service of petitioner had been terminated. In cross-examination, petitioner has admitted to have been engaged on January, 2002 at Balag at Jhungi as daily wager which falsified his claim so have been engaged in 1998 although worked intermittently till January, 2005 when he was terminated from service. In cross-examination, he has also admitted to have not represented from 2005 to 2014 before respondent for engagement although admitted that demand notice had issued to respondent in the year 2014 which establishes that industrial dispute was not raised for almost seven years without any plausible explanation from side of petitioner.

12. RW1 Shri Suneet Bhardwaj, DFO, Suket Forest Division, Sunder Nagar, the contesting respondent has admitted in cross-examination that petitioner worked with respondent under muster roll however respondent did not issue any notice to petitioner calling upon to join service when he absented from duty in January, 2005 and at the same time, no disciplinary action was taken against petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll their names have been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days were included in seniority list meaning thereby that since petitioner did not work for 240 days or more with respondent his names was not included in seniority list. Be it stated in cross-examination RW1 has revealed that petitioner was initially engaged in January, 2002 however admitted that workmen shown at serial No. 88 to 113 were engaged after termination of service of petitioner *i.e.* after January, 2005. It is admittedly not the case of respondent that any notice for reemployment or re-engagement was issued to petitioner calling upon him to join service while engaging workers

shown at serial No. 88 to 113 in seniority list Ex. P4. It is manifest from seniority list that workers shown at serial No. 88 to 113 had been engaged and several others to have joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service which establishes violation of Section 25-H of the Act. For applicability of Section 25-H of Act it was not necessary for the petitioner to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 169 days and from January 2002 more than several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, it certainly violated Section 25-H of Act moreso when RW1 has admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

13. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent break as set up in claim petition. Thus, respondent cannot be stated to have violated Section 25-G of Act while giving work to junior to petitioner and giving fictional break to petitioner despite availability of sufficient work and funds at particular time.

14. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

15. Relying upon the aforesaid judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had

completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 169 days as per mandays chart on record and that the services of petitioner were disengaged in 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years i.e.** demand notice was given on 17-12-2014. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

16. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

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| Ref. No. | : 753/2016 |
| Date of Institution | : 18-11-2016 |
| Date of Decision | : 10-10-2018 |

Shri Babu Ram s/o Shri Keshav Ram, r/o Village Chouri, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Babu Ram, s/o Shri Keshav Ram, r/o Village Chouri, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. *w.e.f.* 21-02-2002 by the Divisional Forest Officer Suket Forest Division Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated nil received in the Office of Labour Office Mandi on 17-12-2014 after more than 12 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 24 days during year 2002 and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1993 as daily waged beldar in Forest Division Suket at Sunder Nagar District Mandi, H.P. who continuously worked till February, 2002 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the seniority list maintained by it. It is claimed that despite availability of sufficient work and funds, service of petitioner had been terminated in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity). The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating his service as his name too was not incorporated in seniority list. It is alleged that respondent had engaged several workers junior to petitioner namely Het Ram, Asha Ram, Dalip Kumar etc. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with back wages and all other consequential benefits as petitioner had remained unemployed besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged as daily waged beldar as per availability of works and funds at the relevant period. It is asserted that petitioner had been engaged only for seasonal work subject to availability of works and funds and worked with Incharge Balag Beat in Jhungi Forest Range under Suket Forest Division from the month of January, 2002 who worked with respondent/department intermittently upto February, 2002 when he abandoned the job. It is claimed that petitioner after February, 2002 never came for work and thus petitioner had not completed required period of working days *i.e.* 240 days in a year preceding his termination and his name was thus not included in seniority list rather he had been issued only casual card. It is

denied that service of petitioner had been engaged *w.e.f.* 1993 however it is stated that petitioner had been engaged *w.e.f.* January, 2002 who worked upto February, 2002. It is also asserted by respondent that petitioner at no point of time completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act were not attracted. It is asserted that persons junior to petitioner as claimed in para No. 6 of claim petition were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that respondent/department had engaged one Yashwant Singh who had issued demand and during conciliation proceedings, respondent department agreed to prepare seniority list including name of said Yashwant Singh from date of initial engagement. The petitioner also reiterated his stand *qua* violation of principle of 'Last come First go' envisaged under Section 25-G of the Act as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of RTI information Ex. PW1/B (9 pages), copy of notification dated 8-7-2013 Ex. PW1/C, copy of regularization list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-12-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 21-02-2002 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.10,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1, 2 and 4 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 24 days in the year 2002. In his affidavit Ex. PW1/A petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated on March, 2006 but certainly there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from January, 2002 till February, 2002 whereas the claimant/petitioner alleged that he had worked from 1997 to 2006. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record establishing petitioner to have been engaged in 1997, the only inference in such situation could be drawn is that petitioner had been factually engaged in January, 2002 and not in the year 1997 moreover petitioner has not mentioned any date or month when he was factually engaged. It is specifically stated in the affidavit that petitioner has been engaged who worked with the respondent as daily rated workman. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list and that name of petitioner had not been deliberately included in the seniority list so prepared. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained and service of petitioner had been terminated. In cross-examination, petitioner has admitted to have been engaged on January, 2002 at Balag at Jhungi as daily wager which falsified his claim so have been engaged in 1998 although worked intermittently till February, 2002 when he was terminated from service. In cross-examination, he has also admitted to have not represented from 2002 to 2014 before respondent for engagement although admitted that demand notice had issued to respondent in the year 2014 which establishes that industrial dispute was not raised for almost seven years without any plausible explanation from side of petitioner.

12. RW1 Shri Suneet Bhardwaj, DFO, Suket Forest Division, Sunder Nagar, the contesting respondent has admitted in cross-examination that petitioner worked with respondent under muster roll however respondent did not issue any notice to petitioner calling upon to join service when he absented from duty in February, 2002 and at the same time, no disciplinary action was taken against petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll their names have been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days were included in seniority list meaning thereby that since petitioner did not work for 240 days or more with respondent his names was not included in seniority list. Be it stated in cross-examination RW1 has revealed that petitioner was initially engaged in January, 2002 however admitted that workmen shown at serial No. 88 to 113 were engaged after termination of service of petitioner *i.e.* after February, 2002. It is admittedly not the case of respondent that any notice for reemployment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown at serial No. 88 to 113 in seniority list Ex. P4. It is manifest from seniority list that workers shown at serial No. 88 to 113 had been engaged and several others to have joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service which establishes violation of Section 25-H of the Act. For applicability of Section 25-H of Act it was not necessary for the petitioner to establish that petitioner had actually worked for 240

days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 24 days and from January 2002 more than several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, it certainly violated Section 25-H of Act moreso when RW1 has admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (supra) as referred to above, it is held that respondent had violated Section 25-H of the Act.

13. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent break as set up in claim petition. Thus, respondent cannot be stated to have violated Section 25-G of Act while giving work to junior to petitioner and giving fictional break to petitioner despite availability of sufficient work and funds at particular time.

14. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

15. Relying upon the aforesaid judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac

directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 01 year and actually worked for 24 days as per mandays chart on record and that the services of petitioner were disengaged in 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years i.e.** demand notice was given on 17-12-2014. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 45 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

16. In view of foregoing discussion, a lump-sum compensation of Rs. 10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

| | |
|---------------------|--------------|
| Ref. No. | : 874/2016 |
| Date of Institution | : 07-12-2016 |
| Date of Decision | : 10-10-2018 |

Shri Paras Ram s/o Shri Moti Ram, r/o Village Gugli, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. .. Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. .. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

| | |
|--------------------|------------------------------------|
| For the Petitioner | : Sh. Abhishek Lakhanpal, Adv. |
| For the Respondent | : Sh. Sanjeev Singh Rana, Dy. D.A. |

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Paras Ram s/o Shri Moti Ram, r/o Village Gugli, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during August, 2004 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 25-02-2015 after delay of more than 10 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during years 2001, 2002 and 2004 for 13, 8 and 23 days respectively and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1998 as daily waged beldar in Forest Division Suket at Sunder Nagar District Mandi, H.P. who continuously worked till September, 2010 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the seniority list maintained by it. It is claimed that despite availability of sufficient work and funds, service of petitioner had been terminated in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity). The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating his service as his name too was not incorporated in seniority list. It is alleged that respondent had engaged several workers junior to petitioner namely Krishnoo, Ganga Ram, Harish, Indira, Balak Ram, Kamal Chand, Tej Ram, Prakash, Amar Singh. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with back wages and all other consequential benefits as petitioner had remained unemployed besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged as daily waged beldar as per availability of works and funds at the relevant period. It is asserted that petitioner had been engaged only for seasonal work subject to availability of works and funds and worked with Incharge Balag Beat in Jhungi Forest Range under Suket Forest Division from the month of January, 2001 who worked with respondent/department intermittently upto August, 2004 when he abandoned the job. It is claimed that petitioner after August, 2004 never came for work and thus petitioner had not completed required period of working days *i.e.* 240 days in a year preceding his termination and his name was thus not included in seniority list rather he had been issued only casual card. It is also asserted by respondent that petitioner at no point of time completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act were not attracted. It is asserted that persons junior to petitioner as claimed in para No. 6 of claim petition were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that respondent/department had engaged one Yashwant Singh who had issued demand and during conciliation proceedings, respondent department agreed to prepare seniority list including name of said Yashwant Singh from date of initial engagement. The petitioner also reiterated his stand *qua* violation of principle of 'Last come First go' envisaged under Section 25-G of the Act as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of RTI information Ex. PW1/B (9 pages), copy of notification dated 8-7-2013 Ex. PW1/C, copy of regularization list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-1-2018 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during August, 2004 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.12,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 44 days from years 2001 to 2004. In his affidavit Ex. PW1/A petitioner has stated to have been engaged by respondent in the years 1998 whose service had been terminated on September, 2010 but certainly there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from January, 2001 till August, 2004 whereas the claimant/petitioner alleged that he had worked from 1998 to 2010. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record establishing petitioner to have been engaged in 1998, the only inference in such situation could be drawn is that petitioner had been factually engaged in January, 2001 to August, 2004 and not from 1998 to 2010 moreover petitioner has not mentioned any date or month when he was factually engaged. It is specifically stated in the affidavit that petitioner has been engaged who worked with the respondent as daily rated workman. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list and that name of petitioner had not been deliberately included in the seniority list so prepared. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained and service of petitioner had been terminated. In cross-examination, petitioner has admitted to have been engaged on January, 2001 at Balag at Jhungi as daily wager which falsified his claim so have been engaged in 1998 although worked intermittently till August, 2004 when he was terminated from service. In cross-examination, he has also admitted to have not represented from 2004 to 2015 before respondent for engagement although admitted that demand notice had issued to respondent in the year 2015 which establishes that industrial dispute was not raised for almost seven years without any plausible explanation from side of petitioner.

12. RW1 Shri Suneet Bhardwaj, DFO, Suket Forest Division, Sunder Nagar, the contesting respondent has admitted in cross-examination that petitioner worked with respondent under muster roll however respondent did not issue any notice to petitioner calling upon to join service when he absented from duty in August, 2004 and at the same time, no disciplinary action was taken against petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll their names have been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days were included in seniority list meaning thereby that since petitioner did not work for 240 days or more with respondent his names was not included in seniority list. Be it stated in cross-examination RW1 has revealed that petitioner was initially engaged in January, 2001 however admitted that workmen shown at serial No. 75 to 113 were engaged after termination of service of petitioner i.e. after August, 2004. It is admittedly not the case of respondent that any notice for reemployment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown at serial No. 75 to 113 in seniority list Ex. P4. It is manifest from seniority list that workers shown at serial No. 75 to 113 had been engaged and several others to have joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service which establishes violation of Section 25-H of the Act. For applicability of Section 25-H of Act it was not necessary for the petitioner to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 44 days and from August, 2004 more than several workmen had been engaged as stated above and

before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, it certainly violated Section 25-H of Act moreso when RW1 has admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (supra) as referred to above, it is held that respondent had violated Section 25-H of the Act.

13. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no *iota* of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent break as set up in claim petition. Thus, respondent cannot be stated to have violated Section 25-G of Act while giving work to junior to petitioner and giving fictional break to petitioner despite availability of sufficient work and funds at particular time.

14. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

15. Relying upon the aforesaid judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 44 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years i.e.** demand notice was given on 25-2-2015. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

16. In view of foregoing discussion, a lump-sum compensation of Rs. 12,000/- (Rupees twelve thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D. A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 12,000/- (Rupees twelve thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so

awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 516/2016
Date of Institution : 23-8-2016
Date of Decision : 10-10-2018

Shri Chaman Lal s/o Shri Keshav Ram, r/o Village Chouri, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Chaman Lal, s/o Shri Keshav Ram, r/o Village Chouri P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during 2005 by

the Divisional Forest Officer Suket Forest Division Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated during 2015 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 17, 50 and 30 days during years 2003, 2004 and 2005 respectively and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex- worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Forest Division Suket at Sunder Nagar District Mandi, H.P. who continuously worked till March, 2006 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the seniority list maintained by it. It is claimed that despite availability of sufficient work and funds, service of petitioner had been terminated in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity). The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating his service as his name too was not incorporated in seniority list. It is alleged that respondent had engaged several workers junior to petitioner namely Krishnoo, Ganga Ram, Harish, Indira, Balak Ram, Kamal Chand, Tej Ram, Prakash, Amar Singh. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with back wages and all other consequential benefits as petitioner had remained unemployed besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged as daily waged beldar as per availability of works and funds at the relevant period. It is asserted that petitioner had been engaged only for seasonal work subject to availability of works and funds and worked with Incharge Balag Beat in Jhungi Forest Range under Suket Forest Division from the month of August, 2003 who worked with respondent/department intermittently upto January, 2005 when he abandoned the job. It is claimed that petitioner after January, 2005 never came for work and thus petitioner had not completed required period of working days *i.e.* 240 days in a year preceding his termination and his name was thus not included in seniority list rather he had been issued only casual card. It is denied that service of petitioner had been engaged *w.e.f.* 1997 however it is stated that petitioner had been engaged *w.e.f.* August, 2003 who worked upto January, 2005. It is also asserted by respondent that petitioner at no point of time completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act were not attracted. It is asserted that persons junior to petitioner as claimed in para Nos. 5 & 6 of claim petition were senior to the petitioner however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that respondent/department had engaged one Yashwant Singh who had issued demand and during conciliation proceedings, respondent department agreed to prepare seniority list including name of said Yashwant Singh from date of initial engagement. The

petitioner also reiterated his stand *qua* violation of principle of 'Last come First go' envisaged under Section 25-G of the Act as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of RTI information Ex. PW1/B (9 pages), copy of notification dated 8-7-2013 Ex. PW1/C, copy of regularization list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H. P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-12-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during year 2005 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 87 days from the years 2003 to 2005. In his affidavit Ex. PW1/A

petitioner has stated to have been engaged by respondent in the year 1997 whose service had been terminated on March, 2006 but certainly there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from August, 2003 till January, 2005 whereas the claimant/petitioner alleged that he had worked from 1997 to 2006. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record establishing petitioner to have been engaged in 1997, the only inference in such situation could be drawn is that petitioner had been factually engaged in August, 2003 and not in the year 1997 moreover petitioner has not mentioned any date or month when he was factually engaged. It is specifically stated in the affidavit that petitioner has been engaged who worked with the respondent as daily rated workman. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list and that name of petitioner had not been deliberately included in the seniority list so prepared. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained and service of petitioner had been terminated. In cross-examination, petitioner has admitted to have been engaged on 1997 at Balag at Jhungi as daily wager which falsified his claim so have been engaged in 2003 although worked intermittently till January, 2005 when he was terminated from service. In cross-examination, he has also admitted to have not represented from 2005 to 2015 before respondent for engagement although admitted that demand notice had issued to respondent in the year 2015 which establishes that industrial dispute was not raised for almost ten years without any plausible explanation from side of petitioner.

12. RW1 Shri Suneet Bhardwaj, DFO, Suket Forest Division, Sunder Nagar, the contesting respondent has admitted in cross-examination that petitioner worked with respondent under muster roll however respondent did not issue any notice to petitioner calling upon to join service when he absented from duty in 2005 and at the same time, no disciplinary action was taken against petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll their names have been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days were included in seniority list meaning thereby that since petitioner did not work for 240 days or more with respondent his names was not included in seniority list. Be it stated in cross-examination RW1 has revealed that petitioner was initially engaged in August, 2003 however admitted that workmen shown at serial No. 94 to 113 were engaged after termination of service of petitioner *i.e.* after January, 2005. It is admittedly not the case of respondent that any notice for reemployment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown at serial No. 94 to 113 in seniority list Ex. P4. It is manifest from seniority list that workers shown at serial No. 94 to 113 had been engaged and several others to have joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service which establishes violation of Section 25-H of the Act. For applicability of Section 25-H of Act it was not necessary for the petitioner to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 87 days and from August, 2003 more than several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, it certainly violated Section 25-H of Act moreso when RW1 has admitted to have not

issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

13. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent break as set up in claim petition. Thus, respondent cannot be stated to have violated Section 25-G of Act while giving work to junior to petitioner and giving fictional break to petitioner despite availability of sufficient work and funds at particular time.

14. Ld. Dy. D. A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

15. Relying upon the aforesaid judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 97 days as per mandays chart on record and that the services of petitioner were disengaged in 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years i.e.** demand notice was given in the year 2015. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

16. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 515/2016
Date of Institution : 23-8-2016
Date of Decision : 10-10-2018

Shri Dhani Ram s/o Shri Mast Ram, r/o Village Aaronali, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Dhani Ram, s/o Shri Mast Ram, r/o Village Aaronali P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during 02/2005 by the Divisional Forest Officer Suket Forest Division Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated nil received on 25-11-2014 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 16, 15, 78 and 30 days during years 2001, 2003, 2004 and 2005 respectively and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 2001 as daily waged beldar in Forest Division Suket at Sunder Nagar District Mandi, H.P. who continuously worked till January, 2005 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the seniority list maintained by it. It is claimed that despite availability of sufficient work and funds, service of petitioner had been terminated in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity). The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating his service as his name too was not incorporated in seniority list. It is alleged that respondent had engaged several workers junior to petitioner namely Krishnool, Ganga Ram, Harish, Indira, Balak Ram, Kamal Chand, Tej Ram, Prakash, Amar Singh. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to reengage petitioner with back wages and all other consequential benefits as petitioner had remained unemployed besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged as daily waged beldar as per availability of works and funds at the relevant period. It is asserted that petitioner had been engaged only for seasonal work subject to availability of works and funds and worked with Incharge Balag Beat in Jhungi Forest Range under Suket Forest Division from the month of July, 2001 who worked with respondent/department intermittently upto January, 2005 when he abandoned the job. It is claimed that petitioner after January, 2005 never came for work and thus petitioner had not completed required period of working days *i.e.* 240 days in a year preceding his termination and his name was thus not included in seniority list rather he had been issued only casual card. It is also asserted by respondent that petitioner at no point of time completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act were not attracted. It is asserted that persons junior to petitioner as claimed in para Nos. 5 & 6 of claim petition were senior to the petitioner however qua earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that respondent/department had engaged one Yashwant Singh who had issued demand and during conciliation proceedings, respondent department agreed to prepare seniority list including name of said Yashwant Singh from date of initial engagement. The

petitioner also reiterated his stand qua violation of principle of 'Last come First go' envisaged under Section 25-G of the Act as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of RTI information Ex. PW1/B (9 pages), copy of notification dated 8-7-2013 Ex. PW1/C, copy of regularization list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-12-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during February, 2005 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 139 days from the years 2001 to 2005. In his affidavit Ex. PW1/A

petitioner has stated to have been engaged by respondent in the year 2001 whose service had been terminated on January, 2005. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from July, 2001 till January, 2005. It is specifically stated in the affidavit that petitioner has been engaged who worked with the respondent as daily rated workman. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list and that name of petitioner had not been deliberately included in the seniority list so prepared. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained and service of petitioner had been terminated. In cross-examination, he has also admitted to have not represented from 2005 to 2014 before respondent for engagement although admitted that demand notice had issued to respondent in the year 2014 which establishes that industrial dispute was not raised for almost ten years without any plausible explanation from side of petitioner.

12. RW1 Shri Suneet Bhardwaj, DFO, Suket Forest Division, Sunder Nagar, the contesting respondent has admitted in cross-examination that petitioner worked with respondent under muster roll however respondent did not issue any notice to petitioner calling upon to join service when he absented from duty in 2005 and at the same time, no disciplinary action was taken against petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll their names have been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days were included in seniority list meaning thereby that since petitioner did not work for 240 days or more with respondent his names was not included in seniority list. Be it stated in cross-examination RW1 has revealed that petitioner was initially engaged in 2001 however admitted that workmen shown at serial No. 82 to 113 were engaged after termination of service of petitioner *i.e.* after January, 2005. It is admittedly not the case of respondent that any notice for reemployment or reengagement was issued to petitioner calling upon him to join service while engaging workers shown at serial No. 82 to 113 in seniority list Ex. P4. It is manifest from seniority list that workers shown at serial No. 82 to 113 had been engaged and several others to have joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service which establishes violation of Section 25-H of the Act. For applicability of Section 25-H of Act it was not necessary for the petitioner to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act.** Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 139 days and from 2005 more than several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering reemployment, it certainly violated Section 25-H of Act moreso when RW1 has admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

13. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent

break as set up in claim petition. Thus, respondent cannot be stated to have violated Section 25-G of Act while giving work to junior to petitioner and giving fictional break to petitioner despite availability of sufficient work and funds at particular time.

14. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

15. Relying upon the aforesaid judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I. D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has

been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 4 years and actually worked for 139 days as per mandays chart on record and that the services of petitioner were disengaged in 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years i.e.** demand notice was given 25-11-2014. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 42 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court petitioner would not be entitled either for re-instatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

16. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 514/2016

Date of Institution : 23-8-2016

Date of Decision : 10-10-2018

Shri Ramesh Kumar s/o Shri Chaman Lal, r/o VPO Balag, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ramesh Kumar, s/o Shri Chaman Lal, r/o V.P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during 01/2005 by the Divisional Forest Officer Suket Forest Division Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated nil received on 17-12-2014 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period 17, 84 and 29 days during years 2003, 2004 and 2005 respectively and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged by respondent in the year 1997 as daily waged beldar in Forest Division Suket at Sunder Nagar District Mandi, H.P. who continuously worked till February, 2008 when service of petitioner had been illegally terminated. The grievance of the petitioner remains that after his termination, respondent without issuing any notice calling him to join service had engaged several daily wagers who were working with the respondent department as has been reflected in the seniority list maintained by it. It is claimed that despite availability of sufficient work and funds, service of petitioner had been terminated in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity). The petitioner further claimed that respondent had not followed principle of 'Last come First Go' while terminating his service as his name too was not incorporated in seniority list. It is alleged that respondent had engaged several workers junior to petitioner namely Krishnoo, Ganga Ram, Harish, Indira, Balak Ram, Kamal Chand, Tej Ram, Prakash, Amar Singh. Accordingly, petitioner seeks setting aside of oral and illegal termination order passed by respondent with further prayer to direct respondent to re-engage petitioner with back wages and all other consequential benefits as petitioner had remained unemployed besides has further prayed that period of interrupted service be counted as continuous service.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged as daily waged beldar as per availability of works and funds at the relevant period. It is asserted that petitioner had been engaged only for seasonal work subject to availability of works and funds and worked with Incharge Balag Beat in Jhungi Forest Range under Suket Forest Division from the month of August, 2003 who worked with respondent/department intermittently upto January, 2005 when he abandoned the job. It is claimed that petitioner after January, 2005 never came for work and thus petitioner had not completed required period of working days *i.e.* 240 days in a year preceding his termination and his name was thus not included in seniority list rather he had been issued only casual card. It is also asserted by respondent that petitioner at no point of time completed 240 days in any year for which he worked & thus provisions of Section 25-B of the Act were not attracted. It is asserted that persons junior to petitioner as claimed in para No. 5 of claim petition were engaged on compassionate grounds however *qua* earnings of petitioner after termination it is claimed that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that respondent/department had engaged one Yashwant Singh who had issued demand and during conciliation proceedings, respondent department agreed to prepare seniority list including name of said Yashwant Singh from date of initial engagement. The petitioner also reiterated his stand *qua* violation of principle of 'Last come First go' envisaged under Section 25-G of the Act as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of RTI information Ex. PW1/B (9 pages), copy of notification dated 8-7-2013 Ex. PW1/C, copy of regularization list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-12-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during January, 2005 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/B showing petitioner to have merely worked for 130 days from years 2003 to 2005. In his affidavit Ex. PW1/A petitioner has stated to have been engaged by respondent in the years 1997 whose service had been terminated on March, 2006 but certainly there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from August, 2003 till January, 2005 whereas the claimant/petitioner alleged that he had worked from 1997 to 2006. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record establishing petitioner to have been engaged in 1997, the only inference in such situation could be drawn is that petitioner had been factually engaged in August, 2003 to January, 2005 and not from 1997 to 2006 moreover petitioner has not mentioned any date or month when he was factually engaged. It is specifically stated in the affidavit that petitioner has been engaged who worked with the respondent as daily rated workman. It is further alleged in affidavit by petitioner that after his termination, respondent/department continued recruiting daily waged beldar and had thus engaged several daily wagers as reflected in the seniority list and that name of petitioner

had not been deliberately included in the seniority list so prepared. It is alleged by petitioner in his affidavit that respondent did not follow retrenchment procedure envisaged under Section 25-G of the Act as juniors were retained and service of petitioner had been terminated. In cross-examination, petitioner has admitted to have been engaged on 1997 at Balag at Jhungi as daily wager which falsified his claim so have been engaged in 2003 although worked intermittently till 2005 when he was terminated from service. In cross-examination, he has also admitted to have not represented from 2005 to 2014 before respondent for engagement although admitted that demand notice had issued to respondent in the year 2014 which establishes that industrial dispute was not raised for almost seven years without any plausible explanation from side of petitioner.

12. RW1 Shri Suneet Bhardwaj, DFO, Suket Forest Division, Sunder Nagar, the contesting respondent has admitted in cross-examination that petitioner worked with respondent under muster roll however respondent did not issue any notice to petitioner calling upon to join service when he absented from duty in January, 2005 and at the same time, no disciplinary action was taken against petitioner. However, clarified of his own that petitioner used to come and work at his will. Significantly, RW1 has admitted that all daily wagers who were engaged on muster roll their names have been incorporated in seniority list and thereafter clarified of his own that only those workmen were shown in seniority list who had completed 240 days were included in seniority list meaning thereby that since petitioner did not work for 240 days or more with respondent his names was not included in seniority list. Be it stated in cross-examination RW1 has revealed that petitioner was initially engaged in August, 2003 however admitted that workmen shown at serial No. 94 to 113 were engaged after termination of service of petitioner *i.e.* after January, 2005. It is admittedly not the case of respondent that any notice for re-employment or re-engagement was issued to petitioner calling upon him to join service while engaging workers shown at serial No. 94 to 113 in seniority list Ex. P4. It is manifest from seniority list that workers shown at serial No. 94 to 113 had been engaged and several others to have joined thereafter which establishes plea of petitioner that several workmen as stated above had been engaged after termination of petitioner but petitioner was not called to join service which establishes violation of Section 25-H of the Act. For applicability of Section 25-H of Act it was not necessary for the petitioner to establish that petitioner had actually worked for 240 days in preceding one year prior to termination placing reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that **for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as required for applicability of Section 25-F of the Act**. Thus, when mandays chart Ex. RW1/B showed petitioner to have merely worked for 130 days and from August, 2003 more than several workmen had been engaged as stated above and before engaging workmen, no notice was issued to petitioner by respondent offering re-employment, it certainly violated Section 25-H of Act moreso when RW1 has admitted to have not issued notice to petitioner as stated above. As such, from admission made by RW1 coupled with law laid down by Hon'ble Apex Court in 1996 (*supra*) as referred to above, it is held that respondent had violated Section 25-H of the Act.

13. In so far as allegation of intermittent breaks and violation of procedure for retrenchment as alleged in the claim petition is concerned, there is no iota of evidence on record except bald assertion of the petitioner as incorporated in his affidavit but there being no corresponding evidence to show that petitioner had been deliberately given intermittent breaks by respondent moreso when there is no reference from appropriate govt. on this point with regard to unlawful intermittent break, this court is not required to give findings on plea of intermittent break as set up in claim petition. Thus, respondent cannot be stated to have violated Section 25-G of Act while giving work to junior to petitioner and giving fictional break to petitioner despite availability of sufficient work and funds at particular time.

14. Id. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after above 10 years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceedings under the Industrial Disputes Act.

15. Relying upon the aforesaid judgments, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contentions of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance which labour court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**, it has been specifically observed that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services

have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 130 days as per mandays chart on record and that the services of petitioner were disengaged in 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** i.e. demand notice was given on 17-12-2014. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 35 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration facts and circumstances of case more specifically to judgment of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

16. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

18. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 260/2015
Date of Institution : 27-6-2015
Date of decision : 10-10-2018

Shri Ramesh Chand s/o Shri Narad Ram, r/o Village Bhakha, P.O. Nihari, District Mandi,
H.P. *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
: Sh. Sunit Thakur, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Ramesh Chand s/o Shri Narad Ram, r/o Village Bhakha, P.O. Nihari, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during June, 2010 to May, 2012 and finally during June, 2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in January, 2000 where he continued to work till May, 2012 when his service was finally terminated in June, 2012 by a verbal order. Averments made in the claim further revealed that after engagement of petitioner several junior workmen were also engaged by the respondent but petitioner was arbitrarily given time to time fictional breaks despite availability of sufficient funds and work. The grievance of petitioner remains that while giving fictional breaks by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner qua time to time breaks which had been done by respondent in violation of provisions of Industrial Disputes Act (hereinafter called the Act for brevity). Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained who continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of Act. It is also alleged that respondent has also acted in violation of Section 9-A and 10 of the Act by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act and the act of respondent was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2000 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner has been prayed to be treated as continuous service for the period of time to time break and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits and has prayed to be given work charge/regular status as per direction of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* June, 2012 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the year 2010 where he worked intermittently upto 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in June, 2012 rather petitioner is stated to be still working till 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No.FFE-B-C(1)-35/2009 dated 28-4-2009 and there had been no violation of provisions of Section 9A and 10 of the Act on the part of respondent who has asserted that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits along-with continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B1 to Ex. RW1/B16 copies of bills and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 14-12-2016 for determination:

1. Whether time to time termination of the services of petitioner during June, 2010 to May, 2012 by the respondent is illegal and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during June, 2012 is illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . .*OPR*.

Relief:

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Redundant

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : Unpressed

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 4-12-2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2010 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in 2010 and is shown to be working in 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month and not at all engaged from 2000 to 2009. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31-3-2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleged therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in 2000 and working intermittently till 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case in cross-examination of RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with him and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31-3-2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was raised against respondent while temporarily retrenching service of petitioner *i.e.* giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Girish Kumar Block Forest Officer. Statement of said Chet Ram has been obtained by petitioner under RTI Act Ex. PW2/A-4 in which said Girish Kumar had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had not been regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Said Yashwant Singh is shown to have been engaged on 1st January, 2000 and had been given fictional breaks but was regularly working with the respondent since 2006. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February 2013 and thereafter he had left the job but while issuing regularization order as shown in Ex. PB dated 29-6-2017, said Yashwant Singh has been regularized. Although, in his claim petition, the petitioner has neither mentioned the name of Baldev Singh nor Yashwant Singh but certainly this evidence shows discriminatory attitude of the respondent in regularizing junior and ignoring the name of petitioner who was certainly senior to both the above named workmen. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as stated above.

16. Id. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks to petitioner from time to

time as has come in evidence which is illegal and unjustified and in violation of provision of Act. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity as well as seniority in service from the date of initial engagement as stated above **except back wages** for the reasons stated hereinabove. Issues No. 1 to 3 are decided accordingly.

Issue No.4 :

18. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks illegally by respondent with the object that petitioner did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No. 5 :

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent from his initial date of engagement from April, 2009 with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 409/2016
Date of Institution : 27-06-2016
Date of Decision : 11-10-2018

Shri Pradeep Kumar s/o Shri Soohdu Ram, r/o VPO Sadwan (Manohra), Tehsil Nurpur,
District Kangra, H.P. *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P.
 2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.
- *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Pradeep Kumar s/o Shri Soohdu Ram, r/o V.P.O. Sadwan (Manohra), Tehsil Nurpur, District Kangra, H.P. during June, 1990 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P., (ii) the Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 26-04-2013 after lapse of more than 12 years. If not, keeping in view delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. which has since been renamed Jawali where several construction sites like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari were being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June, 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Jawali under mistaken plea had terminated service of petitioner in the month of June, 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate

office of respondent. It is alleged that after termination petitioner has remained unemployed and not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 he made several verbal requests to respondent visiting number of time to HPPWD Division as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance and thereafter a separate resolution on behalf of retrenched workers including petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied till date. It is claimed that for the purpose of seniority, petitioner and similarly situated persons of daily wages basis whole of HPPWD constituted one unit and while terminating service principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy petitioner could not approach this court. It is claimed that one Smt. Kusum Lata w/o Sh. Roshan Lal, VPO Suliali, Tehsil Nurpur, District Kangra, had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 with direction to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated of Section 25-F (a) (b) (c) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being re-engaged in service with past seniority till re-engagement and benefits of continuity in service and other consequential benefits.

The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had not worked with the respondent and that HPPWD Division Jassur had been shifted/renamed as HPPWD Jawali in the year 1994 *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It is denied that petitioner had worked with the respondent from May, 1986 to June, 1990 however contended that petitioner had never worked with the respondent and as such question of completion of 240 days did not arise. In so far resolution of retrenched workers sent to Assistant Registrar, Hon'ble Administrative Tribunal, Shimla was concerned, it pleaded ignorance as it was not sent to respondent with regard to allegation of juniors and retaining senior *i.e.* petitioner, it is contended that provisions of Section 25-G and 25-H of the Act has not been flouted besides maintained Smt. Kusum Lata and persons at serial No. 1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial No.1 to 24 in para No. 8 of the claim petition were engaged under Nurpur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh Thakur, the then Executive Engineer, B&R Division HPPWD Jawali, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of letter dated 18-8-1994 Ex. RW1/D and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during June, 1990 is/was improper and unjustified? . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that no mandays chart has been produced or proved by either party showing that petitioner had been factually engaged by respondent from May, 1986 to June, 1990. The plea of respondent as can be seen from reply on record show that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and thereafter being retrenchment as claimed did not arise. As such, it was the petitioner who had to prove that he had worked under respondent for the period as alleged in claim petition and thereafter illegally terminated.

12. To prove his case petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The testimony of petitioner has not been corroborated by any co-worker who might have worked with him and as such uncorroborated testimony of petitioner cannot be relied as respondent has specifically denied relationship of petitioner being employee of respondent at any point of time. RW1 has repudiated claim of the petitioner in entirety although tendered Notification dated 21-7-1994 Ex. RW1/B and letter dated 18-8-1994 Ex. RW1/C. Cross-examination of RW1 reveals that according to record available in the office petitioner had neither been engaged nor worked under HPPWD Division Jassur and thereafter with HPPWD Division Jawali.

13. Ld. Counsel for the petitioner has contended that since reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under Section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial dispute *inter-se* parties. On the other hand, Id. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand had been taken *i.e.* respondent having not been engaged petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence *qua* petitioner having been engaged could be proved producing reply filed by the respondent before Conciliation Officer which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under Section 25-F of the Act *i.e.* issuance of one month notice or compensation in lieu thereof. As such, judgment of Hon'ble High Court of H.P. reported in **2017 (Vol.1) Himachal Law Reporter (Fortnightly) 286** titled as **State of Himachal Pradesh & another Vs. Partap Singh** relied upon by Id. Counsel for petitioner is not attracted and for similar reasons, respondent is held to have not violated provisions of Sections 25-G and 25-H of the Act as petitioner failed to prove having been engaged by respondent as claimed.

14. In view of the foregoing discussions, petitioner is held not entitled to any relief as claimed by him. Accordingly, issue No.1 is answered in negative holding that respondent has not terminated service of petitioner in the month of June, 1990 & has thus not violated Section 25-F, 25-G and 25-H of the Act and for said reason, petitioner is not entitled for any consequential service benefits as claimed. Issue No.1 is thus answered in negative. In so far as issue No. 3 *qua* maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

Issue No. 4 :

15. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches does not arise and issue No. 4 is answered in negative in favour of petitioner and against respondent.

Relief :

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 439/2016

Date of Institution : 19-08-2016

Date of Decision : 11-10-2018

Shri Kuldeep Singh s/o Shri Beer Singh, r/o Village Fatehpur Hada, Tehsil Fatehpur, District Kangra, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Fatehpur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Kuldeep Singh s/o Shri Beer Singh, r/o Village Fatehpur Hada, Tehsil Fatehpur, District Kangra, H.P. during February, 1985 by and the Executive Engineer, Fatehpur Division, H.P.P.W.D. Fatehpur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 07-08-2013 after lapse of more than 28 years. If not, keeping in view of working period from year, 1977 to February, 1985 respectively and delay of more than 28 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been initially appointed as beldar on daily wages basis in May, 1981 in HPPWD Division Fatehpur, H.P. where several construction work was being carried out when service of petitioner was arbitrarily disengaged *w.e.f.* June, 1990 besides alleged to have completed 240 days in each calendar year. It is alleged that Executive Engineer, Jassur now shifted to HPPWD Fatehpur under mistaken plea had terminated service of petitioner in the month of June, 1990 and after illegal termination, petitioner had been continuously visiting office of respondent as well as subordinate office of respondent for his re-engagement in service. It is alleged that after termination petitioner has remained unemployed who was not gainfully employed having no source of income. It is alleged that after oral termination of service of petitioner in June, 1990 several verbal requests had been made to respondent visiting number of time to HPPWD Division

as well as Sub-Division who was assured to be engaged after three-four months but the respondent did not act upon assurance given to petitioner and thereafter a separate resolution on behalf of retrenched workers including that of petitioner was sent to Assistant Registrar, Hon'ble H.P. Administrative Tribunal, Shimla which too has not been replied so far. It is claimed that for the purpose of seniority, petitioner and similarly situated daily waged workers whole of HPPWD constituted one unit and while terminating service of petitioner principle of 'Last come First go' was not followed besides alleged that due to poverty and illiteracy, petitioner could not approach this court earlier. It is claimed that fresh hands had been retained who worked in HPPWD Sub-Division Nurpur and others 24 junior workers similarly situated have been appointed by Engineer-in-Chief in the year 2010 in pursuance to which direction was passed by the Hon'ble High Court of H.P. in CWP No. 2106 to 2129/2010 to implement award dated 22-12-2007. It is claimed that respondent while disengaging service of petitioner orally had adopted pick and choose policy as juniors were retained and while engaging fresh hands petitioner had not been given any notice calling upon to join service. Accordingly, petitioner claims that respondent had not violated Section 25-F (a) (b) (c) of Industrial Disputes Act (hereinafter called 'Act' for brevity) by not issuing notice, compensation in lieu thereof of notice period and notifying reason for disengagement. Moreover, petitioner had also urged that respondent had violated provision of Section 25-G of the Act also. Accordingly, petitioner prays for quashing and setting aside verbal order of disengagement of petitioner in June, 1990 with prayer for being re-engaged in service with past seniority till re-engagement and benefits of continuity in service and other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had been disengaged in June, 1990 and that petitioner had worked intermittently from in the year 1977 till 1985 and left the work at his own sweet will however emphatically denied that petitioner had completed 240 days in each calendar year. Thus, setting up plea of abandonment, it is asserted that petitioner had merely worked for 04 days in the year 1977, 160 days in 1978, 95 days in 1979, 54 days in 1981 and 25 days in 1985. It is alleged that persons at serial No. 1 to 24 are stated to have not at all worked with respondent rather persons mentioned at serial No. 1 to 24 in para No. 8 of the claim petition were engaged under Nurpur Division on the direction of Hon'ble High Court of H.P. It is emphatically denied that respondent violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Mohinder Pal Dhiman, the then Executive Engineer, B&R Division HPPWD Fatehpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 26-8-2017 for determination which are as under:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 07-8-2013 qua his termination of service during February, 1985 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of services of the petitioner by the respondent during February, 1985 is/was improper and unjustified? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS*Issues No. 2 and 3:*

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B, petitioner is shown to have worked in the month of October, 1977 for a period of 04 days, 160 days in 1978, 95 days in 1979, 54 days in 1981 and 25 days in 1985. As such, from mandays chart as aforesaid above, no inference of petitioner to have worked for 240 days immediately preceding 12 calendar months from termination could be drawn. PW1 Kuldeep Singh, the petitioner has stepped into witness box deposed on oath as maintained in claim petition. In cross-examination, he denied that no junior to him had been retained by respondent after termination of service of petitioner. He has shown ignorance that persons mentioned in claim petition as well as affidavit from serial No.1 to 24 were re-engaged in HPPWD Division Nurpur as per court order. He denied that respondent had followed principle of 'last come first go' as the juniors to petitioner had been retained by the respondent. In his affidavit Ex. PW1/A, petitioner has claimed to have worked from May, 1981 to June, 1990 but the mandays chart on record does not support his statement. RW1 Mohinder Pal Dhiman, Executive Engineer, HPPWD, Fatehpur has denied this fact who clarified that according to their record petitioner had merely worked for 338 days and last year he worked for 25 days only in 1985 and 54 days prior to it in 1981 however in between no work was given to petitioner. Otherwise also, in either situation, petitioner had not worked for 240 days. As such, uncorroborated testimony of petitioner could not be relied so as to hold that petitioner had factually worked for 240 days immediately prior to his termination in February, 1985 and in that

situation, it was not necessary for respondent to have resorted to procedure envisaged under Section 25-F of the Act.

12. In so far as, plea of abandonment is concerned, same is to be proved like another fact in issue. Mere allegation of respondent that petitioner abandoned the job is not sufficient which was to be proved like any another fact in issue establishing that respondent issued notice calling upon petitioner to join duty which he did not do so and even did not depose that petitioner had abandoned the job. As such, plea of abandonment of job of petitioner raised by respondent merits rejection. It is admittedly not the case of respondent that any notice has been issued prior to termination or disengagement or any compensation was paid in lieu thereof. Accordingly, it is held that respondent has not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G of the Act is concerned, suffice would be to state here that petitioner had not proved any seniority list by which it could be established that procedure envisaged under Section 25-G of the Act was not followed. In absence of seniority list, it could not be stated as to who were the juniors working at the time of petitioner under Jawali Division or prior to it under Jassur Division who had been retained and petitioner has been terminated. With regard to allegation of engagement of 24 workmen in different years as mentioned in affidavit as well as claim petition are not proved to have been engaged as no documentary evidence such as seniority list has been placed on record which would establish that these 24 workmen whose names have been mentioned in claim petition as well as affidavit were junior to petitioner. In absence of documentary evidence, it would be unsafe to hold that workmen junior to petitioner had been retained whereas service of petitioner had been terminated. As such, respondent cannot be stated to be violated provisions of Section 25-G of the Act. No other point was pressed or argued by Id. Counsel for petitioner and Id. Dy. D.A. representing respondent.

12. In view of forgoing discussions, issue No. 2 is decided in negative holding that termination of service of petitioner by the respondent in February, 1985 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. All these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 4 :

13. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Issue No. 1 :

14. Id. Counsel for the petitioner has relied upon judgment titled as **Inder Singh Vs. State of H.P. through Secretary & Ors.** reported in **2016 (Vol.1) Himachal Law Reported (Fortnightly) 487**, in which Hon'ble High Court of H.P. has held that relief under the Act not be denied merely on ground of delay. Id. Dy.D.A. for state has contended that there is long delay in this case unexplained. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional**

Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

15. Enough has been emphasized by Id. Counsel for the petitioner that resolution had been sent by retrenched workmen to Registrar Hon'ble H.P. Administrative Tribunal in the year 1992 which has not been decided and nothing has been intimated to petitioner. Id. Dy. D.A. on the other hand has argued that even if resolution so sent in 1992 as claimed had been sent by petitioner the same shall have no significance does not affect merits of case. Since petitioner has failed to establish violation of Section 25-F, 25-G and 25-H of the Act. Moreover, in view of settled provision of law that claim of petitioner cannot be defeated merely on ground of delay as has been discussed in foregoing paras.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 587/2016
Date of Institution : 24-8-2016
Date of Decision : 30-10-2018

H.P. Shri Man Singh s/o Shri Hari Mitter Singh, r/o V.P.O. Ambota, Tehsil Amb, District Una, .*Petitioner.*

Versus

H.P. The Executive Engineer, Flood Protection Division I&PH Department Gagret District Una, .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rahul Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Man Singh s/o Shri Hari Mitter Singh, r/o V.P.O. Ambota, Tehsil Amb, District Una, H.P. *w.e.f.* 26-06-2004 by the Executive Engineer, Flood Protection, I.&P.H. Department, Gagret, District Una, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 25-05-2015 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 153 days and 121 days during 2003 and 2004 and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 2003 by respondent who continuously worked till 31st July, 2004. Averments made in the petition further revealed that petitioner had been engaged in channelising project of Swan River on which heavy financial expenditure was to be incurred besides work and funds were available with the respondent. It is alleged that petitioner had worked with the respondent/department from May, 2003 till July, 2004 with small interruption when petitioner had not been disengaged by respondent and not engaged thereafter despite availability of work and funds and that service of petitioner had been verbally terminated. Feeling aggrieved with disengagement, petitioner had orally represented respondent for re-engagement in service but of no avail besides maintained that petitioner had issued demand notice on 1-1-2013 which did not yield any result. It is stated that after termination of petitioner from service, respondent had engaged fresh hands and also did not maintain seniority list. Averments made in the claim petition further revealed that petitioner had served another demand notice to the respondent on 25-5-2015 and then matter was brought before the Labour Officer Una consequent upon conciliation was tried in which failure report was submitted and thereafter appropriate government had sent the reference to this court for adjudication. It is alleged that while terminating service of petitioner, respondent had not followed the provisions of Section 25-F(a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) as neither any notice of termination nor any retrenchment compensation had been given to the petitioner at the time of disengagement by respondent. It is asserted that respondent had engaged several workers after terminating service of petitioner without giving any opportunity for reemployment to the petitioner. The petitioner has thus prayed for setting aside verbal order *qua* termination of service of petitioner as stated above with all consequential service benefits and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in the month of May, 2003 who remained engaged till July, 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. It is asserted that respondent had never terminated service of petitioner rather petitioner of his own accord left the job of his own will. It is further asserted that petitioner had never approached or requested the respondent/department for reemployment for about 13 years *i.e.* after October, 2003 besides maintained that petitioner had not worked with the respondent after July, 2004 and therefore question of terminating of service of petitioner in July, 2004 did not arise. It is denied that petitioner was engaged against work which was continuous in nature however department had undertaken work in phased manner of construction work of channelization of Swan River and the said project was completed on March, 2017 as such work was not continuous in nature. It is asserted that work of phase-IV had been stopped since April, 2015 due to non-availability of funds upto date because Central Assistance as required for aforesaid purposes had not been released by the Central Government. It is stated that petitioner had worked with the respondent intermittently *w.e.f.* 4/2003 to 10/2003 per availability of work and funds besides admitted that petitioner had served demand notice on 1-1-2013 which was replied to the petitioner as well as Labour Officer-*cum*-Conciliation Officer, Una and others besides maintained that petitioner had not completed 240 days in each calendar year rather there was no violation of Section 25-F of Act necessitating issuance of notice or paying compensation as claimed. It is categorically stated that no junior to the petitioner had been retained by the respondent. As such, respondent had neither violated

provisions of Section 25-G nor of 25-H of the Act. It is further stated that petitioner had not completed 240 days in any calendar year who had not fulfilled the criteria for continuous service envisaged under Section 25-B of the Act and therefore there was no need to serve any notice to petitioner under Section 25-F of the Act. It is denied that petitioner was unemployed after his termination rather he was agriculturist and gainfully employed and was thus not entitled for back wages and accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is contended that petitioner completed more than 240 days in calendar months preceding his oral disengagement in June, 2004.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Rajesh Mongra, the then Executive Engineer, Flood Protection Division, Gagret, Una as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposal of this case.

8. From the contentions raised, following issues were framed on 11-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 26-06-2004 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is dismissed per operative part of award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by petitioner discloses that petitioner had worked for 233 days preceding 12 calendar months from his termination. In the witness box as PW1, petitioner has claimed to have worked for 240 days claiming to have been appointed in May, 2003 till June, 2004 but testimony of petitioner is not in consonance with documentary evidence *i.e.* mandays chart which negative plea of petitioner to have worked for 240 days. Significantly, petitioner in the witness box has claimed to have worked as daily paid beldar with Flood Protection Sub Division Gagret as a casual worker *w.e.f.* May, 2003 to and worked intermittently upto July, 2004. As stated above that petitioner had been engaged in May, 2003 and worked till June, 2004 and not till 31st July, 2004. The petitioner is held to have worked for 233 days in preceding 12 calendar months as shown in mandays chart. RW1 Shri Rajesh Mongra, Executive Engineer on behalf of respondent hence denied allegation of petitioner to have been engaged and worked as claimed by him rather petitioner had worked *w.e.f.* May, 2003 till June, 2004. Since the petitioner is shown to have worked for less than 240 days provisions of Section 25-F of the Act is not at all attracted requiring respondent to have issued notice or pay compensation in the shape of wages for one month. In his cross-examination, petitioner has denied that he had not worked till June, 2004 when he abandoned the job but significantly further revealed that he had issued demand notice in May, 2015. RW1 Shri Rajesh Mongra, Executive Engineer has testified on oath that no notice under Section 25-F of Act had been given to petitioner as petitioner had abandoned the job himself and had not completed 240 days and thus there was no applicability of Section 25-F of Act as stated above.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or register letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued by respondent/department. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service particularly when he was recurrently absenting from duty. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work so as to seek benefit of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

13. In so far as intermittent breaks is concerned, no documentary evidence has been produced and proved by petitioner establishing that petitioner was denied work whereas other workers were engaged. With regard to plea of work and funds, it would be relevant to mention here that this plea could have been looked into by the court if it had been established that petitioner had been given intermittent break despite availability of work and funds but there is no reliable evidence on record led by petitioner to establish that intermittent breaks had been given by respondent deliberately. As such, it is held that respondent had not given intermittent breaks to the petitioner rather he had worked only for 233 days preceding 12 months as reflected in the mandays chart Ex. RW1/B. Enough has been emphasized that Id. Counsel for petitioner that several workers had been engaged whereas petitioner was not reengaged. Reliance has been placed upon cross-examination of RW1. In his statement, RW1 has revealed that Shri Shounku Ram and Parveen Kumar had been appointed as per the order of court whereas Bishan Lal was

appointed on compassionate ground. It is nowhere pleaded by Id. Counsel for petitioner if these workers were junior or senior to petitioner and at the same time no seniority list had been produced which could substantiate plea of petitioner that respondent in violation of either Section 25-G or 25-H of Act either retained junior and terminated service of petitioner or that after termination of service of petitioner he was not given offer of reemployment while engaging any of these workers whose names has been revealed by RW1 in cross-examination. As such, it would be unsafe to hold that respondent had violated either Section 25-H or 25-G of Act.

14. With regard to petitioner having not remained unemployed and gainfully employed as claimed by petitioner is concerned, this plea is also not tenable as petitioner has not been able to establish that respondent had violated any of the provisions of Section 25 of Act as stated above. Accordingly, issues No. 1 and 2 are answered in negative in favour of respondent and against petitioner.

Issue No. 3 :

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent has contended with vehemence that claim petition is not maintainable whereas Id. Counsel for the petitioner has repudiated arguments so advanced by the Id. Dy. D.A. supporting that petitioner had been engaged as daily wage beldar as reflected in mandays chart Ex. RW1/B. That being so, relationship of master and servant existed between the parties. The grievance of the petitioner remains that his service had been terminated illegally by respondent which he could legitimately agitate by raising industrial dispute and thereafter reference to this court. Accordingly, claim petition is held to be maintainable. Accordingly this issue is answered in negative against the respondent and in favour of petitioner.

Issue No. 4 :

16. Id. Dy. D.A. for State has contended that with vehemence that petition is bad on account of delay and laches. In support of his contention he has placed reliance establishing that petitioner had raised demand notice after about 13 years in May, 2015 whereas his service had been allegedly terminated in June, 2004. There is no explanation from the side of petitioner. No documentary evidence had been produced on record which could establish that petitioner had represented in writing to respondent for his reengagement in service. In any case, claim of petitioner could not be defeated merely on the ground of delay and laches as has been held in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief as has been held in **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. In absence of reliable evidence qua delay and laches and that petitioner has not been able to establish that his claim *qua* violation of provisions of Sections 25-F, 25-G and 25-H of Act. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue No. 4 is decided in negative against the respondent and in favour of petitioner.

Relief :

17. As a sequel to my findings on foregoing issues, the instant claim petition fails and the same is dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 654/2016

Date of Institution : 09-9-2016

Date of Decision : 30-10-2018

Shri Pardeep Kumar s/o Shri Karam Chand, r/o V.P.O. Ambota, Tehsil Amb, District Una,
H.P. . *Petitioner.*

Versus

The Executive Engineer, Flood Protection Division I&PH Department Gagret District Una,
H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rahul Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Pardeep Kumar s/o Shri Karam Chand, r/o V.P.O. Ambota, Tehsil Amb, District Una H.P. during 06/2004 by the Executive Engineer, Flood Protection Division I&PH Deptt. Gagret, District Una H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 25-05-2015 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 157 and 135.5 days during years 2003 and 2004 respectively and delay of more than 11 years in raising the industrial dispute, what amount of consequential benefits including wages and seniority, benefits on the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 2003 by respondent who continuously worked till 31st July, 2004. Averments made in the petition further revealed that petitioner had been engaged in channelising project of Swan River on which heavy financial expenditure was to be incurred besides work and funds were available with the respondent. It is alleged that petitioner had worked with the respondent/department from May, 2003 till July, 2004 with small interruption when petitioner had not been reengaged by respondent. Feeling aggrieved with disengagement, petitioner had orally represented respondent for reengagement in service but of no avail besides maintained that petitioner had issued demand notice on 1-1-2013 which did not yield any result. It is stated that after termination of petitioner from service, respondent had engaged fresh hands and also maintained seniority list. It is further stated that respondent had verbally terminated service of petitioner without any reason. Averments made in the claim petition further revealed that petitioner had served another demand notice to the respondent on 25-5-2015 and then matter was brought before the Labour Officer Una consequent upon which a failure report was submitted and appropriate government had sent the reference to this court for adjudication. It is alleged that while terminating service of petitioner, respondent had not followed the provisions of Section 25-F(a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is further alleged that neither any notice of termination nor any retrenchment compensation had been given to the petitioner at the time of disengagement by respondent. It is asserted that respondent had engaged several workers junior to the petitioner after his disengagement without giving any opportunity to petitioner for reemployment. The petitioner has thus prayed for setting aside verbal order qua termination of service of petitioner as stated above with all consequential service benefits and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in the month of May, 2003 who remained engaged till June, 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. It is asserted that respondent had never terminated service of petitioner but he had left the job of his own will. It is further asserted that petitioner had never approached or requested the respondent/department for about 13 years *i.e.* after June, 2004 besides maintained that petitioner had not worked with the respondent after June, 2004 and therefore question of terminating of service of petitioner in 31st July, 2004 did not arise. It is denied that petitioner was engaged against work which was continuous in nature however department had undertaken work in phased manner of construction work of channelization of Swan River and the said project was completed on March, 2017 as such work was not continuous in nature. It is asserted that work of phase-IV had been stopped since April, 2015 due to non-availability of funds upto date because Central Assistance as required for aforesaid purposes had not been released by the Central Government. It is stated that petitioner had worked with the respondent intermittently *w.e.f.* 5/2003 to 6/2004 per availability of work and funds besides admitted that petitioner had served demand notice on 1-1-2013 which was replied to the petitioner as well as Labour Officer-cum-Conciliation Officer, Una and others. It is further stated that petitioner had never completed 240 days in each calendar year and as such there was no violation of Section 25-F of Act necessitating issuance of notice or paying compensation as claimed. It is categorically stated that no junior to the petitioner had been retained by the respondent. As such, respondent had neither violated provisions of Section 25-G nor of 25-H of the Act. It is further stated that petitioner had not completed 240 days in any calendar year who had not fulfilled the criteria for continuous service envisaged under Section 25-B of the Act and therefore there was no need to serve any notice to petitioner under Section 25-F of the Act. It is denied that petitioner was unemployed after his termination rather he was

agriculturist and gainfully employed and was thus not entitled for back wages and accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is contended that petitioner completed more than 240 days in calendar months preceding his oral disengagement in June, 2004.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Rajesh Mongra, the then Executive Engineer, Flood Protection Division, Gagret, Una as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposal of this case.

8. From the contentions raised, following issues were framed on 11.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during June, 2004 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions of engagement in service by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not terminated petitioner from service who had himself abandoned the job of his own who used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner had factually worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2003 till 2004 whereas the claimant/petitioner alleges that he had worked from May, 2003 to July, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till June, 2004 and not upto July, 2004 as claimed. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service by respondent without complying with mandatory provisions of Act. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement, back wages alongwith seniority, past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit, he has claimed to have worked with the respondent/department for more than 240 days and remained engaged from 2003 to June, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report under the Act was submitted and then appropriate authority sent reference to this court for adjudication.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued by respondent/department. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service particularly when he was recurrently absenting from duty. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to

him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work so as to seek benefit of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance at mandays chart Ex. RW1/B would reveal that petitioner had worked for 157 days in the year 2003 and 135.5 days in 2004 and thus in his total service in 2003 to 2004 *i.e.* two years, he had merely worked for 292½ days. Be it noticed that petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the years 2003 and 2004 the petitioner had worked for 135.5 days in 2004 and 157 days in 2003 aggregating to 292½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of more than 240 days so as to meet requirement of law of having continuous service of one year and thus it was required from respondent to have issued a notice envisaged under Section 25-F of the Act which had not been done in this case. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after 11 years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

16. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 292½ days as per mandays chart on record and that the services of petitioner were disengaged in June, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given on 25-5-2015. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 49 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages particularly when claim for back wages was neither pleaded nor proved by alleging in affidavit Ex. PW1/A but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

17. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to petitioner in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

| | |
|---------------------|--------------|
| Ref. No. | : 652/2016 |
| Date of Institution | : 09-9-2016 |
| Date of Decision | : 30-10-2018 |

Shri Manoj Kumar s/o Shri Sadhu Singh, r/o V.P.O. Mawa Kohlan, Tehsil Amb, District Una, H.P. . .Petitioner.

Versus

The Executive Engineer, Flood Protection Division I&PH Department Gagret District Una, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

| | |
|--------------------|------------------------------------|
| For the Petitioner | : Sh. Rahul Sharma, Adv. |
| For the Respondent | : Sh. Sanjeev Singh Rana, Dy. D.A. |

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Manoj Kumar s/o Shri Sadhu Singh r/o V.P.O. Mawa Kohlan, Tehsil Amb, District Una, H.P. during 10/2003 by the Executive Engineer, Flood Protection Division I&PH Department Gagret District Una, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 25-05-2015 after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 171 days during years 2003 and delay of more than 12 years in raising the industrial dispute, what amount of consequential benefits including wages and seniority, benefits on the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of April, 2003 by respondent who continuously worked till 31st July, 2004. Averments made in the petition further revealed that petitioner had been engaged in channelising project of Swan River on which heavy financial expenditure was to be incurred besides work and funds were available with the respondent. It is alleged that petitioner had worked with the respondent/department from August, 2003 till July, 2004 with small interruption when petitioner had not been disengaged by respondent and not engaged thereafter despite availability of work and funds and that service of petitioner had been verbally terminated. Feeling aggrieved with disengagement, petitioner had orally represented respondent for re-engagement in service but of no avail besides maintained that petitioner had issued demand notice on 1-1-2013 which did not yield any result. It is stated that after termination of petitioner from service, respondent had engaged fresh hands and also did not maintain seniority list. Averments made in the claim petition further revealed that petitioner had served another demand notice to the respondent on 25-5-2015 and then matter was brought before the Labour Officer Una consequent upon conciliation was tried in which failure report was submitted and thereafter appropriate government had sent the reference to this court for adjudication. It is alleged that while terminating service of petitioner, respondent had not followed the provisions of Section 25-F(a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) as neither any notice of termination nor any retrenchment compensation had been given to the petitioner at the time of disengagement by respondent. It is asserted that respondent had engaged several workers after terminating service of petitioner without giving any opportunity for reemployment to the petitioner. The petitioner has thus prayed for setting aside verbal order *qua* termination of service of petitioner as stated above with all consequential service benefits and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in the month of April, 2003 who remained engaged till October, 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. It is asserted that respondent had never terminated service of petitioner rather petitioner of his own accord left the job of his own will. It is further asserted that petitioner had never approached or requested the respondent/

department for re-employment for about 14 years *i.e.* after October, 2003 besides maintained that petitioner had not worked with the respondent after October, 2003 and therefore question of terminating of service of petitioner in November, 2003 did not arise. It is denied that petitioner was engaged against work which was continuous in nature however department had undertaken work in phased manner of construction work of channelization of Swan River and the said project was completed on March, 2017 as such work was not continuous in nature. It is asserted that work of phase-IV had been stopped since April, 2015 due to non-availability of funds upto date because Central Assistance as required for aforesaid purposes had not been released by the Central Government. It is stated that petitioner had worked with the respondent intermittently *w.e.f.* 4/2003 to 10/2003 per availability of work and funds besides admitted that petitioner had served demand notice on 1-1-2013 which was replied to the petitioner as well as Labour Officer-*cum*-Conciliation Officer, Una and others besides maintained that petitioner had not completed 240 days in each calendar year rather there was no violation of Section 25-F of Act necessitating issuance of notice or paying compensation as claimed. It is categorically stated that no junior to the petitioner had been retained by the respondent. As such, respondent had neither violated provisions of Section 25-G nor of 25-H of the Act. It is further stated that petitioner had not completed 240 days in any calendar year who had not fulfilled the criteria for continuous service envisaged under Section 25-B of the Act and therefore there was no need to serve any notice to petitioner under Section 25-F of the Act. It is denied that petitioner was unemployed after his termination rather he was agriculturist and gainfully employed and was thus not entitled for back wages and accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is contended that petitioner completed more than 240 days in calendar months preceding his oral disengagement in June, 2004.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Rajesh Mongra, the then Executive Engineer, Flood Protection Division, Gagret, Una as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the *Id.* counsel of petitioner and *Id.* Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposal of this case.

8. From the contentions raised, following issues were framed on 11-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during June, 2004 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

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|--------------------|--|
| <i>Issue No. 1</i> | : No |
| <i>Issue No. 2</i> | : Discussed |
| <i>Issue No. 3</i> | : No |
| <i>Issue No. 4</i> | : Discussed |
| <i>Relief</i> | : Petition is dismissed per operative part of award. |

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by petitioner discloses that petitioner had worked for 171 days from May, 2003 to October, 2003. In the witness box as PW1, petitioner has claimed to have worked for 240 days claiming to have been appointed in April, 2003 till 21st July, 2004 but testimony of petitioner is not in consonance with documentary evidence *i.e.* mandays chart which negative plea of petitioner to have worked for 240 days. Significantly, petitioner in the witness box has claimed to have worked as daily paid beldar with Flood Protection Sub Division Gagret as a casual worker *w.e.f.* 4-11-2003 to and worked intermittently upto October, 2003. As stated above that petitioner had been engaged in May, 2003 and not in April, 2003 and worked till October, 2003 and not till 31st July, 2004. The petitioner is held to have worked for 171 days as shown in mandays chart. RW1 Shri Rajesh Mongra, Executive Engineer on behalf of respondent hence denied allegation of petitioner to have been engaged and worked as claimed by him rather petitioner had worked *w.e.f.* November, 2003 till October, 2003. Since the petitioner is shown to have worked for less than 240 days provisions of Section 25-F of the Act is not at all attracted requiring respondent to have issued notice or pay compensation in the shape of wages for one month. In his cross-examination, petitioner has denied that he had not worked till October, 2003 when he abandoned the job but significantly further revealed that he had issued demand notice in May, 2015. RW1 Shri Rajesh Mongra, Executive Engineer has testified on oath that no notice under Section 25-F of Act had been given to petitioner as petitioner had abandoned the job himself and had not completed 240 days and thus there was no applicability of Section 25-F of Act as stated above.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or register letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued by respondent/department. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2003. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service particularly when he was recurrently absenting from duty. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240

days of work so as to seek benefit of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

13. In so far as intermittent breaks is concerned, no documentary evidence has been produced and proved by petitioner establishing that petitioner was denied work whereas other workers were engaged. With regard to plea of work and funds, it would be relevant to mention here that this plea could have been looked into by the court if it had been established that petitioner had been given intermittent break despite availability of work and funds but there is no reliable evidence on record led by petitioner to establish that intermittent breaks had been given by respondent deliberately. As such, it is held that respondent had not given intermittent breaks to the petitioner rather he had worked only for 171 days as reflected in the mandays chart Ex. RW1/B. Enough has been emphasized that ld. counsel for petitioner that several workers had been engaged whereas petitioner was not reengaged. Reliance has been placed upon cross-examination of RW1. In his statement, RW1 has revealed that Shri Shouunku Ram and Parveen Kumar had been appointed as per the order of court whereas Bishan Lal was appointed on compassionate ground. It is nowhere pleaded by ld. Counsel for petitioner if these workers were junior or senior to petitioner and at the same time no seniority list had been produced which could substantiate plea of petitioner that respondent in violation of either Section 25-G or 25-H of Act either retained junior and terminated service of petitioner or that after termination of service of petitioner he was not given offer of re-employment while engaging any of these workers whose names has been revealed by RW1 in cross-examination. As such, it would be unsafe to hold that respondent had violated either Section 25-H or 25-G of Act.

14. With regard to petitioner having not remained unemployed and gainfully employed as claimed by petitioner is concerned, this plea is also not tenable as petitioner has not been able to establish that respondent had violated any of the provisions of Section 25 of Act as stated above. Accordingly, issues No. 1 and 2 are answered in negative in favour of respondent and against petitioner.

Issue No. 3 :

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent has contended with vehemence that claim petition is not maintainable whereas ld. counsel for the petitioner has repudiated arguments so advanced by the ld. Dy. D.A. supporting that petitioner had been engaged as daily wage beldar as reflected in mandays chart Ex. RW1/B. That being so, relationship of master and servant existed between the parties. The grievance of the petitioner remains that his service had been terminated illegally by respondent which he could legitimately agitate by raising industrial dispute and thereafter reference to this court. Accordingly, claim petition is held to be maintainable. Accordingly this issue is answered in negative against the respondent and in favour of petitioner.

Issue No. 4 :

16. Ld. Dy. D.A. for State has contended that with vehemence that petition is bad on account of delay and laches. In support of his contention he has placed reliance establishing that petitioner had raised demand notice after about 12 years in May, 2015 whereas his service had been allegedly terminated in October, 2003. There is no explanation from the side of petitioner. No documentary evidence had been produced on record which could establish that petitioner had represented in writing to respondent for his re-engagement in service. In any case, claim of petitioner could not be defeated merely on the ground of delay and laches as has been held in

2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief as has been held in **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. In absence of reliable evidence *qua* delay and laches and that petitioner has not been able to establish that his claim *qua* violation of provisions of Sections 25-F, 25-G and 25-H of Act. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue No. 4 is decided in negative against the respondent and in favour of petitioner.

Relief:

18. As a sequel to my findings on foregoing issues, the instant claim petition fails and the same is dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

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| Ref. No. | : 590/2016 |
| Date of Institution | : 24-8-2016 |
| Date of Decision | : 30-10-2018 |

Shri Sanjeev Kumar s/o Shri Shakti Singh, r/o Village & Post Office Ambota, Tehsil Amb, District Una, H.P. . .Petitioner.

Versus

The Executive Engineer, Flood Protection Division I&PH Department Gagret District Una, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

| | |
|--------------------|------------------------------------|
| For the Petitioner | : Sh. Rahul Sharma, Adv. |
| For the Respondent | : Sh. Sanjeev Singh Rana, Dy. D.A. |

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Sanjeev Kumar s/o Shri Shakti Singh, r/o V.P.O. Ambota, Tehsil Amb, District Una, H.P. during 06/2004 by the Executive Engineer, Flood Protection I&PH Department Gagret, District Una, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 25-05-2015 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 196 and 127.5 days during years 2003 and 2004 respectively and delay of more than 11 years in raising the industrial dispute, what amount of consequential benefits including wages and seniority, benefits on the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of April, 2003 by respondent who continuously worked till 31st July, 2004. Averments made in the petition further revealed that petitioner had been engaged in channelising project of Swan River on which heavy financial expenditure was to be incurred besides work and funds were available with the respondent. It is alleged that petitioner had worked with the respondent/department from April, 2003 till July, 2004 with small interruption when petitioner had not been re-engaged by respondent. Feeling aggrieved with disengagement, petitioner had orally represented respondent for re-engagement in service but of no avail besides maintained that petitioner had issued demand notice on 1-1-2013 which did not yield any result. It is stated that after termination of petitioner from service, respondent had engaged fresh hands and also maintained seniority list. It is further stated that respondent had verbally terminated service of petitioner without any reason. Averments made in the claim petition further revealed that petitioner had served another demand notice to the respondent on 25-5-2015 and then matter was brought before the Labour Officer Una consequent upon which a failure report was submitted and appropriate government had sent the reference to this court for adjudication. It is alleged that while terminating service of petitioner, respondent had not followed the provisions of Section 25-F(a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is further alleged that neither any notice of termination nor any retrenchment compensation had been given to the petitioner at the time of disengagement by respondent. It is asserted that respondent had engaged several workers junior to the petitioner after his disengagement without giving any opportunity to petitioner for re-employment. The petitioner has thus prayed for setting aside verbal order *qua* termination of service of petitioner as stated above with all consequential service benefits and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in the month of April, 2003 who remained engaged till June, 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. It is asserted that respondent had never terminated service of petitioner but he had left the job of his own will. It is further asserted that petitioner had never approached or requested the respondent/department for about 13 years *i.e.*

after June, 2004 besides maintained that petitioner had not worked with the respondent after June, 2004 and therefore question of terminating of service of petitioner in 31st July, 2004 did not arise. It is denied that petitioner was engaged against work which was continuous in nature however department had undertaken work in phased manner of construction work of channelization of Swan River and the said project was completed on March, 2017 as such work was not continuous in nature. It is asserted that work of phase-IV had been stopped since April, 2015 due to non-availability of funds upto date because Central Assistance as required for aforesaid purposes had not been released by the Central Government. It is stated that petitioner had worked with the respondent intermittently *w.e.f.* 4/2003 to 6/2004 per availability of work and funds besides admitted that petitioner had served demand notice on 1-1.2013 which was replied to the petitioner as well as Labour Officer-*cum*-Conciliation Officer, Una and others. It is further stated that petitioner had never completed 240 days in each calendar year and as such there was no violation of Section 25-F of Act necessitating issuance of notice or paying compensation as claimed. It is categorically stated that no junior to the petitioner had been retained by the respondent. As such, respondent had neither violated provisions of Section 25-G nor of 25-H of the Act. It is further stated that petitioner had not completed 240 days in any calendar year who had not fulfilled the criteria for continuous service envisaged under Section 25-B of the Act and therefore there was no need to serve any notice to petitioner under Section 25-F of the Act. It is denied that petitioner was unemployed after his termination rather he was agriculturist and gainfully employed and was thus not entitled for back wages and accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is contended that petitioner completed more than 240 days in calendar months preceding his oral disengagement in June, 2004.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Rajesh Mongra, the then Executive Engineer, Flood Protection Division, Gagret, Una as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 11-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during June, 2004 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

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|--------------------|---|
| <i>Issue No. 1</i> | : Yes |
| <i>Issue No. 2</i> | : Discussed |
| <i>Issue No. 3</i> | : No |
| <i>Issue No. 4</i> | : Discussed |
| <i>Relief</i> | : Petition is partly allowed awarding lump sum compensation of Rs.50,000/- per operative part of award. |

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions of engagement in service by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not terminated petitioner from service who had himself abandoned the job of his own who used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner had factually worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2003 till 2004 whereas the claimant/petitioner alleges that he had worked from April, 2003 to July, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till June, 2004 and not upto July, 2004 as claimed. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service by respondent without complying with mandatory provisions of Act. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement, back wages along-with seniority, past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit, he has claimed to have worked with the respondent/department for more than 240 days and remained engaged from 2003 to June, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-

sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report under the Act was submitted and then appropriate authority sent reference to this court for adjudication.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued by respondent/department. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service particularly when he was recurrently absenting from duty. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work so as to seek benefit of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance at mandays chart Ex. RW1/B would reveal that petitioner had worked for 196 days in the year 2003 and 127 days in 2004 and thus in his total service in 2003 to 2004 *i.e.* two years, he had merely worked for 323 days. Be it noticed that petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the years 2003 and 2004 the petitioner had worked for 127 days in 2004 and 196 days in 2003 aggregating to 323 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of more than 240 days so as to meet requirement of law of having continuous service of one year and thus it was required from respondent to have issued a notice envisaged under Section 25-F of the Act which had not been done in this case. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. *Ld. Counsel* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after 11 years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

16. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 323 days as per mandays chart on record and that the services of petitioner were disengaged in June, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years** i.e. demand notice was given on 25-5-2015. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 37 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages particularly when claim for back wages was neither pleaded nor proved by alleging in affidavit Ex. PW1/A but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied

upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

17. In view of foregoing discussion, a lump-sum compensation of Rs. 50,000/- (Rupees fifty thousand only) would be an appropriate relief to petitioner in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

| | |
|---------------------|--------------|
| Ref. No. | : 589/2016 |
| Date of Institution | : 24-8-2016 |
| Date of Decision | : 30-10-2018 |

Shri Malkiat Singh s/o Shri Prem Singh, r/o V.P.O. Chalet, Mohalla Chouawalla, District Una, H.P. . *Petitioner.*

Versus

The Executive Engineer, Flood Protection Division I&PH Department Gagret, District Una, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rahul Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Malkiat Singh s/o Shri Prem Singh, r/o V.P.O. Chalet, Mohalla Chouawalla, District Una, H.P. during June, 2004 by the Executive Engineer, Flood Protection Division, I.&P.H. Department, Gagret, District Una, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 116 and 138.5 days during years 2003 and 2004 and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of August, 2003 by respondent who continuously worked till 31st July, 2004. Averments made in the petition further revealed that petitioner had been engaged in channelising project of Swan River on which heavy financial expenditure was to be incurred besides work and funds were available with the respondent. It is alleged that petitioner had worked with the respondent/department from August, 2003 till July, 2004 with small interruption when petitioner had not been re-engaged by respondent. Feeling aggrieved with disengagement, petitioner had orally represented respondent for re-engagement in service but of no avail besides maintained that petitioner had issued demand notice on 1-1-2013 which did not yield any result. It is stated that after termination of petitioner from service, respondent had engaged fresh hands and also maintained seniority list. It is further stated that respondent had verbally terminated service of petitioner without any reason. Averments made in the claim petition further revealed that petitioner had served another demand notice to the respondent on 25-5-2015 and then matter was brought before the Labour Officer Una consequent upon which a failure report was submitted and appropriate government had sent the reference to this court for adjudication. It is alleged that while terminating service of petitioner, respondent had not followed the provisions of Section 25-F(a) & (b) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is further alleged that neither any notice of termination nor any retrenchment compensation had been given to the petitioner at the time of disengagement by respondent. It is asserted that

respondent had engaged several workers junior to the petitioner after his disengagement without giving any opportunity to petitioner for re-employment. The petitioner has thus prayed for setting aside verbal order *qua* termination of service of petitioner as stated above with all consequential service benefits and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in the month of August, 2003 who remained engaged till June, 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. It is asserted that respondent had never terminated service of petitioner but he had left the job of his own will. It is further asserted that petitioner had never approached or requested the respondent/department for about 11 years *i.e.* after June, 2004 besides maintained that petitioner had not worked with the respondent after June, 2004 and therefore question of terminating of service of petitioner in 31st July, 2004 did not arise. It is denied that petitioner was engaged against work which was continuous in nature however department had undertaken work in phased manner of construction work of channelization of Swan River and the said project was completed on March, 2017 as such work was not continuous in nature. It is asserted that work of phase-IV had been stopped since April, 2015 due to non-availability of funds upto date because Central Assistance as required for aforesaid purposes had not been released by the Central Government. It is stated that petitioner had worked with the respondent intermittently *w.e.f.* 8/2003 to 6/2004 per availability of work and funds besides admitted that petitioner had served demand notice on 1-1-2013 which was replied to the petitioner as well as Labour Officer-*cum*-Conciliation Officer, Una and others. It is further stated that petitioner had never completed 240 days in each calendar year and as such there was no violation of Section 25-F of Act necessitating issuance of notice or paying compensation as claimed. It is categorically stated that no junior to the petitioner had been retained by the respondent. As such, respondent had neither violated provisions of Section 25-G nor of 25-H of the Act. It is further stated that petitioner had not completed 240 days in any calendar year who had not fulfilled the criteria for continuous service envisaged under Section 25-B of the Act and therefore there was no need to serve any notice to petitioner under Section 25-F of the Act. It is denied that petitioner was unemployed after his termination rather he was agriculturist and gainfully employed and was thus not entitled for back wages and accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is contended that petitioner completed more than 240 days in calendar months preceding his oral disengagement in June, 2004.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Rajesh Mongra, the then Executive Engineer, Flood Protection Division, Gagret, Una as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 11-10-2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during June, 2004 is/was improper and unjustified as alleged? . . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1, 2 and 4 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions of engagement in service by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not terminated petitioner from service who had himself abandoned the job of his own who used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner had factually worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2003 till 2004 whereas the claimant/petitioner alleges that he had worked from August, 2003 to July, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till June, 2004 and not upto July, 2004 as claimed. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service by respondent without complying with mandatory provisions of Act. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement, back wages alongwith seniority, past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit, he has claimed to have worked with the respondent/department for more than 240 days and remained engaged from 2003 to June, 2004. He has also stated on oath that no notice under Section 25-F of the Act was

given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report under the Act was submitted and then appropriate authority sent reference to this court for adjudication.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued by respondent/department. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service particularly when he was recurrently absenting from duty. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work so as to seek benefit of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance at mandays chart Ex. RW1/B would reveal that petitioner had worked for 116 days in the year 2003 and 138.5 days in 2004 and thus in his total service in 2003 to 2004 *i.e.* two years, he had merely worked for 254½ days. Be it noticed that petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the years 2003 and 2004 the petitioner had worked for 138.5 days in 2004 and 116 days in 2003 aggregating to 254½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of more than 240 days so as to meet requirement of law of having continuous service of one year and thus it was required from respondent to have issued a notice envisaged under Section 25-F of the Act which had not been done in this case. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. *Ld.* Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after 11 years of retrenchment. Repudiating the argument by *Ld.* Counsel, *Ld.* AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High**

Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

16. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief is an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court

factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 254½ days as per mandays chart on record and that the services of petitioner were disengaged in June, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** i.e. demand notice was given on 25-5-2015. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 55 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages particularly when claim for back wages was neither pleaded nor proved by alleging in affidavit Ex. PW1/A but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

17. In view of foregoing discussion, a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) would be an appropriate relief to petitioner in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 45/2016

Date of Institution : 06-10-2016

Date of Decision : 31-10-2018

Shri Jagdish Chand s/o Shri Prabhdyal, r/o Village Jhajar Kukain, P.O. Brarta, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Jagdish Chand s/o Sh. Prabhdyal, r/o Village Jhajar Kukain, P.O. Brarta, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during 9/2001, who has worked as beldar on daily wages basis during the year 11/1998 to 9/2001, and has raised his industrial dispute after delay of more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during the year 11/1998 to 9/2001 and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1998 where he continued to work upto September, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in September, 2001 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1998), Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were

retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 13-3-2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 8/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jai Pal Naik, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 03-1-2018 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent during September, 2001 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump-sum compensation of Rs.25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September, 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked for one year *i.e.* January, 1999 to August, 1999. Since the claim of petitioner is not substantiated from any

corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of January, 1999 till August, 1999. It is claimed that petitioner had not completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 157 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 157 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 1999 immediately prior to his retrenchment as stated above. Be it noticed that Ajay Kumar, Sunita Devi & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2000 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Ajay Kumar, Sunita Devi & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 4 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, respondent is held to have violated Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, irrespective of fact that petitioner had issued demand notice *i.e.* 13-3-2014 after about 12 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs. 1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that

nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to

refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 46 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 157 days in the year 1999 irrespective of fact that demand notice was issued after a period of 12 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 684/2016
Date of Institution : 03-10-2016
Date of Decision : 31-10-2018

Smt. Roshani Devi w/o Shri Om Prakash, r/o Village Strechar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent (s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Roshani Devi w/o Sh. Om Prakash Village Strecher, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. during 9/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engiener, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 11/1998 to 9/1999, only for 289 days, and has raised her industrial dispute vide demand notice dated 29-5-2015 after 15 years without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in

view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1998 where she continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 20-5-2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 21-2-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager in the year 1998 who intermittently worked upto 8/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that

petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jai Pal Naik, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-1-2018 for determination:

1. Whether termination of services of the petitioner by the respondents during the year Sept., 1999 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition suffers from vice of delay and laches as alleged. . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump-sum compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of September, 1999 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from November, 1998 till September, 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of November, 1998 till September, 1999. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 240 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in 1999, petitioner has factually worked for 240 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since in the year 1999 immediately prior to her retrenchment as stated above. Be it noticed that Ajay Kumar, Sunita Devi & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on

23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2000 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Ajay Kumar, Sunita Devi & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 4 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, respondent is held to have violated Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, irrespective of fact that petitioner had issued demand notice i.e. 4-7-2015 after about 15 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Machenzie & Company Ltd. Vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the

claimant/petitioner has prayed for. **Ld. Dy. D.A. for State** has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs. 1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by **ld. counsel/Authorized Representative** for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. **Ld. Counsel** representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by **ld. Counsel, ld. AR** for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. **Ld. Dy. D.A.** has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, **ld. Authorized Representative** for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the **ld. Dy. D.A.** is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made

mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **one years** who was non-skilled worker ageing 51 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 240 days in the year 1999 irrespective of fact that demand notice was issued after a period of 15 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

| | |
|---------------------|--------------|
| Ref. No. | : 727/2016 |
| Date of Institution | : 06-10-2016 |
| Date of Decision | : 31-10-2018 |

Shri Kashmir Singh s/o Shri Raghu Ram, r/o Village Kathaili, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. . Petitioner.

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

| | |
|--------------------|------------------------------------|
| For the Petitioner | : Sh. N.L. Kaundal, AR |
| For the Respondent | : Sh. Sanjeev Singh Rana, Dy. D.A. |

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Kashmir Singh s/o Sh. Raghu Ram. Village Kathaili, PO Longni, Tehsil Sarkaghat, Distt. Mandi, H.P. during 3/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 12/1998 to 3/1999, only for 99 days, and has raised his industrial dispute *vide* demand notice dated 17-3-2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of December, 1998 where he continued to work upto March, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in March, 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shashi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 20-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 17-3-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1998 who intermittently worked upto 3/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jai Pal Naik, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09-3-2018 for determination:

1. Whether termination of the services of petitioner by the respondent during March, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

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|--------------------|-------------|
| <i>Issue No. 1</i> | : Yes |
| <i>Issue No. 2</i> | : Discussed |
| <i>Issue No. 3</i> | : No |
| <i>Issue No. 4</i> | : Discussed |

Relief

: Petition is partly allowed awarding lump-sum compensation of Rs.15,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No. 1, 2 and 4 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of December, 1998 on muster roll basis as beldar who continued to work till March, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked for two years *i.e.* 1998 to 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of December, 1998 till March, 1999. It is claimed that petitioner had not completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 38 days in the year 1998, 227 days in 1999, 199 ½ days in 2000, 175 days in 2001, 95 days in 2002 and 08 days in 2003. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 77 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 1999 immediately prior to his retrenchment as stated above. Be it noticed that Ajay Kumar, Sunita Devi & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25- H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever

petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2000 whereas petitioner had been retrenched in 2003 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Ajay Kumar, Sunita Devi & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 4 of the claim petition were engaged and petitioner was not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, respondent is held to have violated Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, irrespective of fact that petitioner had issued demand notice *i.e.* 17-3-2015 after about 15 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Machenzie & Company Ltd. Vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it

has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 51 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 99 days in the years 1998 to 1999 irrespective of fact that demand notice was issued after a period of 06 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.15,000/- (Rupees fifteen thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award

failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of October, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

ब अदालत जनाब सहायक समाहर्ता प्रथम श्रेणी, सदर, जिला बिलासपुर, हिमाचल प्रदेश

मिसल नम्बर
28/9 ऑफ/2014

तारीख दायरा
25-11-2014

तारीख पेशी
30-05-2019

मुन्नी पुत्री दुर्गा पुत्र मोहन, निवासी गांव दिगथली, तहसील सदर, जिला बिलासपुर (हि0 प्र0)

... प्रार्थी।

बनाम

1. कांशी राम पुत्र दुर्गा, 2. किरपा राम उर्फ नन्दू पुत्र दुर्गा, 3. भगत राम पुत्र सन्त राम, 4. अंजना पुत्री सन्त राम, 5. दसोधा देवी पत्नी स्व० श्री सन्त राम, 6. सुख राम पुत्र दुर्गा सभी स्थाई निवासी गांव दिगथली, परगना व तहसील सदर, जिला बिलासपुर, हि० प्र०।

तकसीम प्रकरण।

उपरोक्त उनवान वाला में मुन्नी देवी पुत्री दुर्गा, निवासी गांव दिगथली, तहसील सदर, जिला बिलासपुर (हि० प्र०) के द्वारा इस न्यायालय में खसरा नम्बर 59, 153, 280/163, 281/163, 167, 202, 203, रकबा 11-16 वाक्या मौजा दिगथली, पटवार वृत्त सोलधा, तहसील सदर, जिला बिलासपुर, हि० प्र० की तकसीम करवाने के लिए आवेदन किया है जोकि अधोहस्ताक्षरी के न्यायालय में विचाराधीन है। प्रत्यार्थीगण का सही पता नहीं मिल रहा है जिस कारण प्रत्यार्थीगण की तामील असालतन तरीके से नहीं हो रही है। इससे अदालत को विश्वास हो चुका है कि प्रत्यार्थीगण की तामील साधारण तरीके से नहीं हो सकती है, जिस कारण तकसीम का यह प्रकरण लम्बित होता जा रहा है।

अतः अब इस इश्तहार के माध्यम से सभी प्रत्यार्थीगण को सूचित किया जाता है कि वे दिनांक 30-05-2019 को असालतन या वकालतन हाजिर होकर अपना पक्ष प्रस्तुत करें। हाजिर न होने की सूरत में एक तरफा कार्यवाही अमल में लाते हुए मिसल में आगामी कार्यवाही कर दी जायेगी।

आज दिनांक 26-04-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
सदर, जिला बिलासपुर (हि० प्र०)।

ब अदालत जनाब सहायक समाहर्ता प्रथम श्रेणी, सदर, जिला बिलासपुर, हिमाचल प्रदेश

| | | |
|--------------|-------------|------------|
| मिसल नम्बर | तारीख दायरा | तारीख पेशी |
| 27/9 ऑफ/2014 | 25-11-2014 | 30-05-2019 |

मुन्नी पुत्री दुर्गा पुत्र मोहन, निवासी गांव दिगथली, तहसील सदर, जिला बिलासपुर (हि० प्र०)

प्रार्थी।

बनाम

1. कांशी राम पुत्र दुर्गा, 2. नन्दू उर्फ किरपा पुत्र दुर्गा, 3. सुख राम पुत्र दुर्गा, 4. भगत राम पुत्र सन्त राम, 5. अंजना पुत्री सन्त राम, 5. दसोधा देवी पत्नी स्व० श्री सन्त राम, सभी स्थाई निवासी गांव दिगथली, परगना व तहसील सदर, जिला बिलासपुर, हि० प्र०।

तकसीम प्रकरण।

उपरोक्त उनवान वाला में मुन्नी पुत्री दुर्गा, निवासी गांव दिगथली, तहसील सदर, जिला बिलासपुर (हि० प्र०) के द्वारा इस न्यायालय में खसरा नम्बर 21, रकबा 3-15 वाक्या मौजा भोजपुर, पटवार वृत्त सोलधा, तहसील सदर, जिला बिलासपुर, हि० प्र० की तकसीम करवाने के लिए आवेदन किया है जोकि अधोहस्ताक्षरी के न्यायालय में विचाराधीन है। प्रत्यार्थीगण का सही पता नहीं मिल रहा है जिस कारण प्रत्यार्थीगण की तामील असालतन तरीके से नहीं हो रही है। इससे अदालत को विश्वास हो चुका है कि प्रत्यार्थीगण की तामील साधारण तरीके से नहीं हो सकती है। जिस कारण तकसीम का यह प्रकरण लम्बित होता जा रहा है।

अतः अब इस इशतहार के माध्यम से सभी प्रत्यार्थीगण को सूचित किया जाता है कि वे दिनांक 30-05-2019 को असालतन या वकालतन हाजिर होकर अपना पक्ष प्रस्तुत करें। हाजिर न होने की सूरत में एक तरफा कार्यवाही अमल में लाते हुए मिसल में आगामी कार्यवाही कर दी जायेगी।

आज दिनांक 26-04-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
सदर, जिला बिलासपुर (हि0 प्र0)।

ब अदालत जनाब सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, चढ़ियार
जिला कांगड़ा, हि0 प्र0

किस्म मुकदमा : दुरुस्ती इन्द्राज

श्रीमती सरोज कुमारी पत्नी स्व0 श्री त्रिलोक चन्द पुत्र हिरु राम, निवासी गांव व डाकघर सलेहरा,
उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

उपरोक्त श्रीमती सरोज कुमारी पत्नी स्व0 श्री त्रिलोक चन्द पुत्र हिरु राम, निवासी गांव व डाकघर सलेहरा, उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) ने इस कार्यालय/न्यायालय में प्रार्थना-पत्र पेश किया है कि मेरे बेटे का नाम आधार कार्ड, पैन कार्ड, राशन कार्ड, स्कूल प्रमाण-पत्र आदि में त्रिदेव सही नाम दर्ज है परन्तु राजस्व अभिलेख महाल सलेहरा में इन्तकाल तस्दीक करते समय मेरे बेटे का नाम सोनू दर्ज है जो कि गलत है। आवेदिका अपने बेटे का नाम राजस्व अभिलेख महाल सलेहरा में सही नाम श्री त्रिदेव पुत्र स्व0 श्री त्रिलोक चन्द, निवासी गांव व डाकघर सलेहरा, उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) दर्ज करवाना चाहती है।

अतः आम जनता को इस राजपत्र इशतहार/नोटिस के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी को कोई उजर व एतराज हो तो वह दिनांक 25-05-2019 को अधोहस्ताक्षरी की अदालत में असालतन या वकालतन हाजिर होकर अपना पक्ष रख सकते हैं। गैर-हाजिरी की सूरत में एक तरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 28-04-2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
चढ़ियार, जिला कांगड़ा, हि0 प्र0।

ब अदालत श्री संजय कुमार (हि0प्र0से0)विवाह पंजीकरण अधिकारी, धीरा, उप-मण्डल धीरा,
जिला कांगड़ा (हि0 प्र0)

1. प्रवीन कुमार आयु 43 वर्ष पुत्र जुल्फी राम, निवासी गांव डूहक कलां, डाकघर डूहक, तहसील थूरल, जिला कांगड़ा।

2. मोनिका आयु 38 वर्ष पुत्री देव राज, निवासी गांव व डाकघर रगांश, तहसील नादौन, जिला हमीरपुर प्रार्थीगण।

बनाम

आम जनता

प्रतिवादीगण।

आम जनता को सूचित किया जाता है कि प्रार्थीगण एक व दो ने इस न्यायालय में विवाह पंजीकरण करवाने का आवेदन किया है। अतः इस इशतहार द्वारा आम जनता व उपरोक्त आवेदनकर्ता के माता-पिता को इस विवाह के पंजीकरण बारे एतराज हो तो वह दिनांक 29-05-2019 या इससे पूर्व प्रातः 10 बजे तक इस न्यायालय में आपत्ति दर्ज करवा सकते हैं। इस तिथि के बाद कोई उजर स्वीकार नहीं किया जायेगा।

आज दिनांक 20-04-2019 को मेरे हस्ताक्षर एवं मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—

विवाह पंजीकरण अधिकारी धीरा,
उप-मण्डल धीरा, जिला कांगड़ा, हिमाचल प्रदेश।

**ब अदालत सहायक समाहर्ता, द्वितीय श्रेणी एवं नायब तहसीलदार, धर्मशाला, जिला कांगड़ा
(हि0 प्र0)**

केस नं0 : 90, 91, 92 एन0 टी0

किस्म मुकद्दमा : तकसीम

तारीख पेशी : 27-05-2019

शीर्षक.—बृज लाल

बनाम

हंस राज

Publication : U/s 5, Rule 20 of CPC.

मुकद्दमा.—तकसीम जेरे धारा 123 हि0 प्र0 भू-राजस्व अधिनियम, 1954 बाबत भूमि खाता नं0 23, खतौनी नं0 28 खसरा नं0 57, रकबा तादादी 01-15-19 व खाता नं0 22, खतौनी नं0 27, खसरा नं0 234, 235, 246, 247, 299, 300, 301, व 303, कित्ता 9, रकबा 01-81-57 व खाता नं0 24, खतौनी नं0 29, खसरा नं0 248, रकबा तादादी 00-45-45 है0 स्थित महाल व मौजा घियाना खुर्द, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0।

इस अदालत में बृज लाल, कर्म चन्द, रंजीत सिंह, केसरी देवी, सविता देवी आदि निवासी महाल व मौजा घियाना खुर्द ने प्रतिवादीगण के खिलाफ भूमि खाता नं0 23, खतौनी नं0 28 खसरा नं0 57, रकबा तादादी 01-15-19 व खाता नं0 22, खतौनी नं0 27, खसरा नं0 234, 235, 246, 247, 299, 300, 301 व 303, कित्ता 9, रकबा 01-81-57 व खाता नं0 24, खतौनी नं0 29, खसरा नं0 248, रकबा तादादी 00-45-45 है0 स्थित महाल व मौजा घियाना खुर्द, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0 की तकसीम किये जाने हेतु मामला दायर किया है। जिसमें प्रतिवादीगण क्रमशः हंस राज, बिधि चन्द, निमो देवी, सुषमा देवी, किरना देवी, रविन्दर कुमार, रजत कुमार, रंजू बाला, रोशन लाल, ईश्वर दास, लाचो देवी, कृशनी देवी, रेखा देवी, संतोष, संजीव कुमार, राजीव कुमार, रीना पुत्री रमेश चन्द, देश राज, पुन्या देवी व सुरिन्दर कुमार पुत्र हरी सिंह, आदि सब निवासी महाल व मौजा घियाना खुर्द, तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0 की उपस्थिति अनिवार्य हेतु हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 में प्रदत्त प्रावधान के अनुसार समन जारी किये जा चुके हैं लेकिन प्रतिवादीगण सुनवाई में हाजिर न हुये हैं। जिस कारण इस अदालत को विश्वास हो चुका है कि प्रतिवादीगण को समन की तामील साधारण तरीके से नहीं हो सकती। अतः उक्त प्रतिवादीगण को इस राजपत्र इशतहार के माध्यम से सूचित किया जाता है कि वे दिनांक 27-05-2019 को इस न्यायालय में प्रातः 12.00 बजे असातन या वकालतन हाजिर आकर मुकद्दमा की पैरवी करें अन्यथा गैर-हाजिरी की सूरत में उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जायेगी तथा उसके उपरान्त कोई भी उजर या एतराज काबिले समायत नहीं होगा।

आज दिनांक 27-04-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0।

ब अदालत सहायक समाहर्ता, द्वितीय श्रेणी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 1/NT/2019

तारीख पेशी : 31-05-2019

श्रीमती मीरा रानी पुत्री बिधि चन्द, गांव नरघोटा, डाकघर थिल, तहसील खुण्डियां, जिला कांगड़ा, हिमाचल प्रदेश (हाल वासी मीरा रानी पत्नी सुभाष चन्द पुत्र मनी राम, निवासी महाल अप्पर पखी, डाकघर बैर घाट, तहसील थुरल, जिला कांगड़ा, हिमाचल प्रदेश)।

बनाम

आम जनता

उनवान मुकद्दमा.—जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत जन्म पंजीकरण।

ईशतहार बनाम आम जनता

प्रार्थिया श्रीमती मीरा रानी पुत्री बिधि चन्द, गांव नरघोटा, डाकघर थिल, तहसील खुण्डियां, जिला कांगड़ा, हिमाचल प्रदेश (हाल वासी मीरा रानी पत्नी सुभाष चन्द पुत्र मनी राम, निवासी महाल अप्पर पखी, डाकघर बैर घाट, तहसील थुरल, जिला कांगड़ा, हिमाचल प्रदेश) ने स्वयं उपस्थित होकर प्रार्थना—पत्र प्रस्तुत किया कि उसका जन्म दिनांक 30-06-1975 को हुआ है। जिसका पंजीकरण कानून की जानकारी न होने के कारण ग्राम पंचायत बारीकलां के अभिलेख में दर्ज न हो सका है। अतः उसकी जन्म तिथि का पंजीकरण ग्राम पंचायत बारीकलां के अभिलेख में दर्ज किया जाये।

अतः सर्वसाधारण एवं रिश्तेदारों को सुनवाई हेतु बजरिये इशतहार राजपत्र हि0 प्र0 द्वारा सूचित किया जाता है कि अगर इस सम्बन्ध में किसी प्रकार का उजर एतराज हो तो वह दिनांक 31-05-2019 को असातन व वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर एतराज जेरे समायत न होगा तथा मीरा रानी पुत्री बिधि चन्द की जन्म तिथि का पंजीकरण दिनांक 30-06-1975 जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत ग्राम पंचायत बारीकलां के अभिलेख में दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 02-05-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता, द्वितीय श्रेणी, तहसील खुण्डियां,
जिला कांगड़ा (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, कल्पा, जिला किन्नौर (हि0 प्र0)

मुकद्दमा नम्बर
03/2019

तारीख रजुआ
01-05-2019

Sh. Jang Bahadur Negi s/o L/Sh. Konchok Ram, r/o Village Yuwarangi, Tehsil Kalpa, Distt. Kinnaur (H. P.).

बनाम

1. आम जनता, ग्राम कल्पा/युवारंगी
2. प्रधान, ग्राम पंचायत कल्पा, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)

विषय.—प्रार्थी की पुत्री का नाम व जन्म तिथि ग्राम पंचायत कल्पा के जन्म पंजीकरण रजिस्टर में दर्ज करवाये जाने बारे अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

हर खास व आम जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि Sh. Jang Bahadur Negi ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन-पत्र मय शपथ-पत्र प्रस्तुत किया है कि उसकी पुत्री Savita Kumari पुत्री श्री जंग बहादुर नेगी का जन्म दिनांक 02-03-1991 को हुआ है तथा अज्ञानतावश प्रार्थी ने उसका पंजीकरण ग्राम पंचायत कल्पा के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है। अब प्रार्थी उपरोक्त नाम व जन्म तिथि ग्राम पंचायत कल्पा के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहता है। इस बारे आदेश जारी करने का अनुरोध किया है।

अतः ग्राम पंचायत कल्पा/युवारंगी, तहसील कल्पा, जिला किन्नौर की आम जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि यदि Savita Kumari पुत्री श्री जंग बहादुर नेगी का जन्म दिनांक 02-03-1991 को हुआ है, का पंजीकरण ग्राम पंचायत कल्पा के जन्म पंजीकरण रजिस्टर में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 30-05-2019 को या इससे पूर्व अदालत में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा आवेदन-पत्र पर जन्म पंजीकरण के आदेश पारित कर सचिव ग्राम पंचायत कल्पा को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 01-05-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
कल्पा, जिला किन्नौर (हि0 प्र0)।

ब अदालत श्री राजेश नेगी, सहायक समाहर्ता द्वितीय श्रेणी, उप-मण्डल डोडरा क्वार,
जिला शिमला, हि0 प्र0

श्री मंगल सिंह पुत्र श्री धन राज, निवासी गांव धन्द्रवाडी, डाकघर क्वार, तहसील डोडरा क्वार, जिला शिमला, हिमाचल प्रदेश।

बनाम

आम जनता

दरखास्त बराए जन्म तिथि की दुरुस्ती पंचायत रिकार्ड में किए जाने बारे।

श्री मंगल सिंह पुत्र श्री धन राज, निवासी गांव धन्द्रवाडी, डाकघर क्वार, तहसील डोडरा क्वार, जिला शिमला, हिमाचल प्रदेश ने अधोहस्ताक्षरी के न्यायालय में एक दरखास्त पेश की है जिसमें आग्रह किया है कि उसकी जन्म तिथि पंचायत रिकार्ड में 11-11-1998 दर्ज है जो कि गलत है जबकि स्कूल प्रमाण-पत्र में 11-01-1998 दर्ज है जो सही है। अतः दुरुस्ती आदेश जारी किये जाएं।

अतः आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि इस बारे यदि किसी भी व्यक्ति को इस बारा कोई आपत्ति/एतराज हो तो वह तारीख पेशी 27-05-2019 को प्रातः 10 बजे या इससे पूर्व असालतन व वकालतन हाजिर होकर पेश कर सकता है। यदि निश्चित तारीख पेशी को किसी भी व्यक्ति से कोई एतराज इस न्यायालय में प्राप्त नहीं होता है तो जन्म तिथि की दुरुस्ती हेतु ग्राम पंचायत धन्द्रवाडी, तहसील डोडरा क्वार को एकतरफा आदेश पारित कर दिए जायेंगे।

आज दिनांक 27-04-2019 को मेरे हस्ताक्षर व मोहर सहित अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
डोडरा क्वार, जिला शिमला, हि0 प्र0।

ब अदालत दलीप चन्द सहायक समाहर्ता द्वितीय श्रेणी, सराहन, उप-तहसील सराहन,
जिला शिमला, हिमाचल प्रदेश

मुकद्दमा नं0 : 16/2018

तारीख दायर : 05-05-2018

श्रीमती नूरमा देवी पत्नी स्व0 श्री मंगत राम, निवासी गांव तलारा, डाकघर शाहधार, उप-तहसील सराहन, जिला शिमला, हि0 प्र0 वादी।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व कागजात माल में नाम दुरुस्त करने बारे प्रार्थना-पत्र।

श्रीमती नूरमा देवी पत्नी स्व0 श्री मंगत राम, निवासी गांव तलारा, डाकघर शाहधार, उप-तहसील सराहन, जिला शिमला, हि0 प्र0 ने इस अदालत में आवेदन-पत्र व ब्यान हल्फी दिया है कि मेरा नाम आधार कार्ड, परिवार रजिस्टर नकल, वोटर कार्ड में नूरमा देवी दर्ज है जो सही व दुरुस्त है परन्तु पटवार वृत्त शाहधार के राजस्व अभिलेख में मेरा नाम मनोरमा देवी दर्ज हुआ है जोकि गलत है तथा आवेदन किया है कि मेरा नाम पटवार वृत्त शाहधार के महाल शाहधार के राजस्व अभिलेख में मनोरमा देवी उर्फ नूरमा देवी जारी करने के आदेश जारी किये जायें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि मनोरमा देवी उर्फ नूरमा देवी का नाम पटवार वृत्त शाहधार के राजस्व अभिलेख में दुरुस्त किया जाना है इस बारे आम जनता को कोई आपत्ति हो तो इस इशतहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर इस सम्बन्ध में अपना उजर/एतराज पेश कर सकते हैं। इसके पश्चात कोई भी उजर/एतराज मान्य नहीं होगा तथा उपरोक्त मनोरमा देवी उर्फ नूरमा देवी का नाम दुरुस्त करने के आदेश पारित कर दिये जायेंगे।

अतः इशतहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 27-03-2019 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील सराहन, जिला शिमला, हि0 प्र0।

**ब अदालत श्री माया राम शर्मा, कार्यकारी दण्डाधिकारी, चौपाल, जिला शिमला
हिमाचल प्रदेश**

श्री दीप राम पुत्र श्री झेंटा राम, गांव सरौह, डाकघर सरौह, तहसील चौपाल, जिला शिमला, हि0 प्र0

बनाम

आम जनता

विषय.—प्रार्थी की जन्म-तिथि ग्राम पंचायत सरौह के जन्म पंजीकरण रजिस्टर में दर्ज करवाए जाने बारे कि अधीन धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

हर खास व आम जनता को बजरिया इश्तहार सूचित किया जाता है कि श्री दीप राम पुत्र श्री झेंटा राम, गांव सरौह, डाकघर सरौह, तहसील चौपाल, जिला शिमला, हि0 प्र0 ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन-पत्र प्रस्तुत किया है कि उसका जन्म पंजीकरण ग्राम पंचायत के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है। अब प्रार्थी अपना जन्म पंजीकरण ग्राम पंचायत सरौह के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहता है जो कि इस प्रकार से है :-

| क्रम संख्या | नाम | संबन्ध | जन्म तिथि |
|-------------|--------|--------|------------|
| 1 | कृतिका | पुत्री | 20-04-1992 |

अतः आम जनता को बजरिया इश्तहार सूचित किया जाता है कि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो तारीख 29-05-2019 को या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करें अन्यथा आवेदन-पत्र पर जन्म पंजीकरण के आदेश पारित करके सचिव ग्राम पंचायत सरौह को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 30-04-2019 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

माया राम शर्मा,
कार्यकारी दण्डाधिकारी,
चौपाल, जिला शिमला (हि0 प्र0)।

**In the Court of Shri Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla, H. P.**

Smt. Promila w/o Shri Ram Lal, r/o Village Bhabiya, P.O. Gianh, Tehsil Nerwa, District Shimla, H.P. . . Applicant.

Versus

General Public

. . Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas, Smt. Promila w/o Shri Ram Lal, r/o Village Bhabiya, P.O. Gianh, Tehsil Nerwa, District Shimla, H.P. has preferred an application to undersigned for registration of name of her

daughters namely Miss Sunakshi whose date of birth (01-01-2014) in the Gram Panchayat Manu Bhabiya, Tehsil Nerwa, District Shimla, H.P.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth, mentioned above, may submit his/her objections in writing in this court on or before 30-05-2019 failing which, no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 29-04-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla, H.P.

**In the Court of Shri Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla, H. P.**

Sh. Shyam Sunder s/o Shri Laiq Ram, r/o Village Gianh, P.O. Gianh, Tehsil Nerwa,
District Shimla, H.P. . . Applicant.

Versus

General Public

. . Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas, Sh. Shyam Sunder s/o Shri Laiq Ram, r/o Village Gianh, P.O. Gianh, Tehsil Nerwa, District Shimla, H.P. has preferred an application to undersigned for registration of name of her daughters namely Miss Simran whose date of birth (14-03-2004) & Miss Rani (23-03-2005) in the Gram Panchayat Manu Bhabiya, Tehsil Nerwa, District Shimla, H.P.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth, mentioned above, may submit his/her objections in writing in this court on or before 02-06-2019 failing which, no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 29-04-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla, H.P.

**In the Court of Shri Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla, H. P.**

Sh. Bhim Singh s/o Shri Bhinder Singh, r/o Village Aar, P.O. Bijmal, Tehsil Nerwa,
District Shimla, H.P. . . Applicant.

Versus

General Public

. . Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas, Sh. Bhim Singh s/o Shri Bhinder Singh, r/o Village Aar, P.O. Bijmal, Tehsil Nerwa, District Shimla, H.P. has preferred an application to undersigned for registration of name of his son namely Mr. Nikhil whose date of birth (02-07-2013) in the Gram Panchayat Bijmal, Tehsil Nerwa, District Shimla, H.P.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth, mentioned above, may submit his/her objections in writing in this court on or before 15-06-2019 failing which, no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 09-05-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla, H.P.

**In the Court of Shri Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla, H. P.**

Sh. Gulam Rasool s/o Shri Nazab Deen, r/o Village Nerwa, P.O. Nerwa, Tehsil Nerwa, District Shimla, H.P. . . Applicant.

Versus

General Public

. . Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas, Sh. Gulam Rasool s/o Shri Nazab Deen, r/o Village Nerwa, P.O. Nerwa, Tehsil Nerwa, District Shimla, H.P. has preferred an application to undersigned for registration of name of her daughter namely Miss Sarina whose date of birth (25-01-1996) in the Gram Panchayat Nerwa, Tehsil Nerwa, District Shimla, H.P.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth, mentioned above, may submit his/her objections in writing in this court on or before 15-06-2019 failing which, no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 08-05-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla, H.P.

**In the Court of Shri Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla, H. P.**

Sh. Dila Ram Sharma s/o Lt. Shri Roop Singh, r/o Village Sunarli, P.O. Bour, Tehsil Nerwa, District Shimla, H.P. . . Applicant.

Versus

General Public . . Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas, Sh. Dila Ram Sharma s/o Lt. Shri Roop Singh, r/o Village Sunarli, P.O. Bour, Tehsil Nerwa, District Shimla, H.P. has preferred an application to undersigned for registration of name of his son/daughter namely Mr. Anirudh Sharma whose date of birth (05-11-2009) and Miss Yashika Sharma (14-12-2015) in the Gram Panchayat Bour, Tehsil Nerwa, District Shimla, H.P.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth, mentioned above, may submit his/her objections in writing in this court on or before 15-06-2019 failing which, no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 09-05-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla, H.P.

**In the Court of Shri Rishabh Sharma, Executive Magistrate, Tehsil Nerwa,
District Shimla, H. P.**

Sh. Reku Jarga s/o Sh. Dil Bahadur Jarga, r/o Village Diandli, P.O. Nerwa, Tehsil Nerwa, District Shimla, H.P. . . Applicant.

Versus

General Public . . Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas, Sh. Reku Jarga s/o Sh. Dil Bahadur Jarga, r/o Village Diandli, P.O. Nerwa, Tehsil Nerwa, District Shimla, H.P. has preferred an application to undersigned for registration of name and his (Mr. Reku Jarga) date of birth (25-12-1997) in the Gram Panchayat Nerwa, Tehsil Nerwa, District Shimla, H.P.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth, mentioned above, may submit his/her objections in writing in this court on or before 18-06-2019 failing which, no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the court on this 10-05-2019.

Seal.

RISHABH SHARMA,
Executive Magistrate,
Tehsil Nerwa, District Shimla, H.P.

**ब अदालत श्री जसमेर सिंह, कार्यकारी दण्डाधिकारी, तहसील रोहडू,
जिला शिमला, हि० प्र०**

श्रीमती नीरा पत्नी श्री मनी राम, निवासी गांव तन्दाली, डा० करासा, तहसील रोहडू, जिला शिमला,
हि० प्र० प्रार्थिनी।

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्रीमती नीरा पत्नी श्री मनी राम, निवासी गांव तन्दाली, डा० करासा, तहसील रोहडू, जिला शिमला, हि० प्र० ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उनके ससुर स्व० श्री परमानन्द पुत्र स्व० अमर सिंह की मृत्यु दिनांक 04-08-2015 को हो चुकी है परन्तु अज्ञानतावश उनकी मृत्यु तिथि को ग्राम पंचायत उकली मेहन्दली के मृत्यु रजिस्टर में आज तक दर्ज नहीं करवाया गया है तथा उनकी मृत्यु तिथि को दर्ज करने के आदेश ग्राम पंचायत उकली मेहन्दली को दिये जावें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी स्व० श्री परमानन्द पुत्र स्व० अमर सिंह की मृत्यु तिथि ग्राम पंचायत उकली मेहन्दली में दर्ज करने में किसी भी प्रकार का उजर व एतराज हो तो वह दिनांक 28-05-2019 तक असागतन या वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करें। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि उपरोक्त मृतक की मृत्यु तिथि ग्राम पंचायत उकली मेहन्दली में दर्ज करने हेतु कोई आपत्ति नहीं है तथा मृत्यु तिथि को ग्राम पंचायत उकली मेहन्दली में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 29-04-2019 को हमारे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

जसमेर सिंह,
कार्यकारी दण्डाधिकारी,
रोहडू, जिला शिमला (हि० प्र०)।

**ब अदालत श्री जसमेर सिंह, कार्यकारी दण्डाधिकारी, तहसील रोहडू,
जिला शिमला, हि० प्र०**

श्री बिक्रम सिंह पुत्र श्री चेत राम, निवासी गांव अढाल, तहसील रोहडू, जिला शिमला, हि० प्र० प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा.—दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री बिक्रम सिंह पुत्र श्री चेत राम, निवासी गांव अढाल, तहसील रोहडू, जिला शिमला, हि० प्र० ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उनके पुत्र दिव्यांश ठाकुर का जन्म दिनांक 03-10-2010 को हुआ है परन्तु अज्ञानतावश उसकी जन्म तिथि को ग्राम पंचायत अढाल के जन्म रजिस्टर में

आज तक पंजीकृत नहीं करवाया गया है तथा उसकी जन्म तिथि को दर्ज करने के आदेश ग्राम पंचायत अदाल को दिये जावें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी दिव्यांश ठाकुर की जन्म तिथि व नाम ग्राम पंचायत अदाल में दर्ज करने में किसी भी प्रकार का उजर व एतराज हो तो वह दिनांक 30-05-2019 को सायं 5 बजे तक असालतन या वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी की जन्म तिथि ग्राम पंचायत अदाल में दर्ज करने हेतु कोई आपत्ति नहीं है तथा जन्म तिथि व नाम ग्राम पंचायत अदाल में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 01-05-2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

जसमेर सिंह,
कार्यकारी दण्डाधिकारी,
रोहडू, जिला शिमला (हि0 प्र0)।

**ब अदालत श्री जसमेर सिंह, कार्यकारी दण्डाधिकारी, तहसील रोहडू,
जिला शिमला, हि0 प्र0**

श्री गवर्धन सिंह पुत्र स्व0 श्री हुमा नन्द, निवासी गांव करालश, तहसील रोहडू, जिला शिमला, हि0 प्र0
... प्रार्थी।

बनाम

आम जनता

उनवान मुकद्दमा.—आवेदन—पत्र दुरुस्ती इन्द्राज जेर धारा 37 हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954
बाबत दुरुस्ती नाम प्रार्थी महाल बरासली।

इस कार्यालय में श्री गवर्धन सिंह पुत्र स्व0 श्री हुमा नन्द, निवासी गांव करालश, तहसील रोहडू, जिला शिमला, हि0 प्र0 ने प्रार्थना—पत्र गुजार कर निवेदन किया है कि भूमि खाता/खतौनी नं0 67/187 महाल बरासली, तहसील रोहडू, के राजस्व अभिलेख में प्रार्थी का नाम गुड्डू दर्ज किया गया है जबकि उसका वास्तविक नाम गवर्धन सिंह है तथा उसका नाम महाल बरासली के राजस्व अभिलेख में गवर्धन सिंह दर्ज किया जाए।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी गवर्धन सिंह पुत्र स्व0 श्री हुमा नन्द का नाम महाल बरासली के राजस्व अभिलेख में गुड्डू के बजाए गवर्धन सिंह दर्ज करने में किसी भी प्रकार का उजर व एतराज हो तो वह दिनांक 28-05-2019 तक असालतन या वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी का नाम महाल बरासली के राजस्व अभिलेख में दर्ज करने में किसी को कोई आपत्ति नहीं है तथा राजस्व अभिलेख में नाम दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 29-04-2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

जसमेर सिंह,
सहायक समाहर्ता प्रथम श्रेणी,
रोहडू, जिला शिमला (हि0 प्र0)।